

Contract Summary Sheet

Contract (PO) Number: 28645

Specification Number: 119565

Name of Contractor: VAN WAGNER COMMUNICATIONS, LLC

City Department: DEPARTMENT OF FINANCE

Title of Contract: Brokerage of Sponsorships, Advertising, and Partnerships for a Bicycle Sharing System

Term of Contract: Start Date: 4/24/2013

End Date: 4/23/2018

Dollar Amount of Contract (or maximum compensation if a Term Agreement) (DUR):

Brief Description of Work: Brokerage of Sponsorships, Advertising, and Partnerships for a Bicycle Sharing System

Procurement Services Contract Area: COMPTROLLER-OTHER

Vendor Number: 56207021

Submission Date:

affected community and shall receive such compensation as provided by the annual appropriation ordinance.

~~From time to time the commission may create additional advisory committee councils on matters of special concern to other racial, cultural or social groups that have been or are subjected to discrimination as a result of membership in such a group.~~

(Omitted text is unaffected by this ordinance)

ARTICLE VII - MUNICIPAL MARKETING

SECTION 1. Chapter 2-32 of the Municipal Code of Chicago is hereby amended by adding a new section 2-32-055, as follows:

2-32-055 Municipal marketing authority.

(a) The chief financial officer is authorized to:

1. Identify specific City assets available for marketing and desirable to potential commercial partners;
2. Prioritize these assets in terms of ease of marketing and short- and/or long-term commercial value;
3. Develop a marketing plan for these assets;
4. Seek out commercial partners for asset-based transactions;
5. Structure marketing programs; and
6. Negotiate the terms of, and execute, asset-based marketing agreements with public and private entities.

(b) The chief financial officer may carry out the duties set forth in subsection (a) of this section either directly, or through a designee, agent or contractor, and is authorized to enter into one or more agreements to secure the services of such designee, agent or contractor.

(c) The chief financial officer shall not enter into any agreement pursuant to subsection (a) of this section that effectuates the sale of a city asset.

(d) Section 10-8-320 shall not apply to any assets used pursuant to this section.

(e) The chief financial officer is authorized to promulgate reasonable rules relating to the administration of this section.

(f) As used in this Section, the following definitions apply:

“Assets” means all assets available to the City, including without limitation tangible physical assets, such as buildings, vehicles and other equipment, and intangible intellectual property, such as patents, copyrights, and trademarks owned by the City, and other intangible opportunities, such as event sponsorship.

“Chief financial officer” means the chief financial officer of the City appointed by the mayor or, if there is no such officer then holding that office, the city comptroller.

ARTICLE VIII - FEE WAIVERS

SECTION 1. Chapter 1-23 of the Municipal Code of Chicago is hereby amended by inserting a new Article III, as follows:

ARTICLE III. ELIGIBILITY OF PUBLIC MUSEUMS AND DISPROPORTIONATE SHARE HOSPITALS FOR FEE WAIVERS

Section 1-23-300 Fee Waivers.

Except as otherwise explicitly provided in this Code, if the applicant for any city license or permit is (1) a public museum and such public museum is eligible to receive funds for capital development under subdivision (7) of §1-25 of the Department of Natural Resources Act, as amended, codified at 20 ILCS 801/1-1 et seq., or (2) a not-for-profit hospital that qualifies for a disproportionate share adjustment consistent with Section 148.120 of Subchapter d of Chapter I of Title 89 of the Illinois Administrative Code, as amended, codified at 89 Ill. Adm. Code §148.120, such public museum or disproportionate share hospital shall be exempt from payment of 20% of any license fee, permit fee, application fee or inspection fee that would otherwise apply in connection with the procurement of such license or permit. Provided, however, that the fee waiver authorized under this section shall not apply in connection with any monies owed by the City to any third party for any service provided to the City by such third party under the department of building’s developer services program or under any other city program.

SECTION 2. Section 11-12-150 is hereby repealed in its entirety.

SECTION 3. The following sections of the Municipal Code of Chicago are hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

3-12-020 Charge for sewer service and use of sewerage system.

EXECUTION COPY

Contract (PO) No.

Specification No.

Vendor No.

102885

56207021 - A

**CITY OF CHICAGO
PROFESSIONAL SERVICES AGREEMENT**

BETWEEN

**THE CITY OF CHICAGO
DEPARTMENT OF FINANCE**

AND

VAN WAGNER COMMUNICATIONS, LLC



**BROKERAGE OF SPONSORSHIPS, ADVERTISING AND PARTNERSHIPS
FOR A BICYCLE SHARING SYSTEM**

**RAHM EMANUEL
MAYOR**

PROFESSIONAL SERVICES AGREEMENT

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List of Exhibits

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EXHIBIT 7	LIST OF KEY PERSONNEL
EXHIBIT 8	VAN WAGNER'S PROPOSAL
EXHIBIT 9	REQUEST FOR PROPOSAL

AGREEMENT

This Agreement is entered into as of the ____ day of April, 2013 ("**Effective Date**") by and between Van Wagner Communications, LLC, a New York Limited Liability Company ("**Consultant**"), and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of Finance ("**City**"), at Chicago, Illinois. The City and Consultant agree as follows:

BACKGROUND INFORMATION

WHEREAS, the City intends to launch a 300 station/3,000 bicycle sharing system available for public use by the second quarter of 2013 and expand to 400 stations and 4,000 bicycles in 2014; and

WHEREAS, the bicycle sharing system will have a dense network of stations primarily located in a 30 square mile area centered on the loop, and such stations will be located on the street or on sidewalks in full view of passing vehicles and pedestrians; and

WHEREAS, the bicycle sharing program presents an opportunity for the City to partner with potential sponsors and advertisers to generate additional visibility and revenue for the City and to enhance the user experience for the users of bicycles; and

WHEREAS, the City wishes to hire a consultant to develop and implement a sponsorship and advertising program for the Chicago bicycle sharing system; and

WHEREAS, Consultant represents and warrants that it is highly qualified and competent to provide such services and has expertise and knowledge in such matters; and

WHEREAS, the City and Consultant have negotiated the terms by which such services will be performed;

WHEREAS, the Consultant warrants that it is ready, willing and able to perform as of the effective date of this Agreement to the full satisfaction of the City.

NOW, THEREFORE, the City and the Consultant agree as follows:

ARTICLE 1. INCORPORATION OF BACKGROUND INFORMATION

The Background Information set forth above is incorporated and made a part of this Agreement by reference.

TERMS AND CONDITIONS

ARTICLE 2. DEFINITIONS

2.1 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

"Additional Services" means those services, which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 3.1, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the City in a written amendment under Section 10.3 of this Agreement before Consultant is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

"Agreement" means this Professional Services Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"Chief Financial Officer" or "CFO" means the Chief Financial Officer of the City and any representative duly authorized in writing to act on behalf of the CFO.

"Consultant Intellectual Property" means any output, whether electronic, documentary, tangible or intangible, the Intellectual Property Rights in which: (i) are owned by or licensed to the Consultant or any third party prior to the Effective Date of this Agreement (including, but not limited to, ideas, concepts, strategies, research and general plans for the marketing and sale of Sponsorships and advertising panels that are used generally by Consultant in its business and not developed uniquely for the City for purposes of this Agreement), or (ii) were acquired by ownership or license by Consultant outside the scope of this Agreement.

"Department" means the City Department of Finance.

"Intellectual Property Rights" means, to the extent that any of the following are recognized in any jurisdiction: copyrights, patent rights (including applications for patent protection); trade secrets registered or otherwise protected, trademark, trade names and service marks, ideas and concepts.

"Services" means, collectively, the services, duties and responsibilities described in Article 3 and Exhibit 1 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"Subcontractor" means any person or entity with whom Consultant contracts to provide any part of the Services, including subcontractors of any tier, suppliers and materials providers, whether or not in privity with Consultant.

2.2 Interpretation

- (a) The term "**include**" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.
- (b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.
- (c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- (d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.
- (e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.
- (f) All references to a number of days mean calendar days, unless indicated otherwise.

2.3 Incorporation of Exhibits

The following attached Exhibits are made a part of this Agreement:

Exhibit 1	Scope of Services
Exhibit 2	Compensation; Sponsorship and Advertising Revenues
Exhibit 3	Special Conditions Regarding MBE/WBE Commitment and Schedules
Exhibit 4	Online Economic Disclosure Statement and Affidavit Certificate of Filing
Exhibit 5	Insurance Requirements and Evidence of Insurance
Exhibit 6	Advertising Standards
Exhibit 7	List of Key Personnel
Exhibit 8	Van Wagner's Proposal
Exhibit 9	Request for Proposal

2.4 Order of Precedence

In the event of any conflict or inconsistency of terms among the various documents that at any given time, constitute this Agreement, the order of precedence that shall apply is as follows, with each listed document or type of document superseding and prevailing over any subsequently listed document or type of document, and with later-executed documents prevailing over earlier documents of the same type, each solely to the extent of any irreconcilable conflict or inconsistency of the terms and condition thereof: (i) the terms and conditions set forth in Articles 1 through 12 of this Agreement; (ii) the Scope of Services in Exhibit 1 and the Compensation Sponsorship and Advertising Revenues in Exhibit 2; and (iii) any Schedules and other Exhibits to this Agreement.

Notwithstanding anything in the Agreement to the contrary, Consultant is subject to and must conform to all of the terms and conditions of Exhibit 8 relating to Federal Provisions. In the event of any conflict or inconsistency between the terms set forth in the Agreement and the terms set forth in Exhibit 8, the terms and provisions Exhibit 8 take precedence over the terms and provisions in the Agreement, except to the extent that the Agreement contains provisions more favorable to the City or federal government or requiring a higher standard of the Consultant. Consultant must not by action or omission cause the City to be in breach of the grant agreement between the City and the funding source.

ARTICLE 3. DUTIES AND RESPONSIBILITIES OF CONSULTANT

3.1 Scope of Services

This description of Services is intended to be general in nature and is neither a complete description of Consultant's Services nor a limitation on the Services that Consultant is to provide under this Agreement. Consultant must provide the Services in accordance with the standards of performance set forth in Section 3.3. The Services that Consultant must provide are described in Exhibit 1, Scope of Services.

3.2 Deliverables

In carrying out its Services, Consultant may prepare or provide to the City various Deliverables. "**Deliverable**" includes all documents, analyses and reports produced by Consultant pursuant to Exhibit 1 and Exhibit 2 as well as other work product, such as written reviews, recommendations, reports and analyses, produced by Consultant for the City.

The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Consultant has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Consultant of its failure. If Consultant does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 9.1.

Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Consultant of its obligations under this Agreement.

3.3 *Standard of Performance*

Consultant must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a Consultant performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Consultant acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City, and, with respect to that information, Consultant agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or Deliverables or payment for any of the Services by the City does not relieve Consultant of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Consultant under this Agreement, at law or in equity.

Consultant must be appropriately licensed to perform the Services, if required by law, and must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as may be required by law. Consultant must provide copies of any such licenses. Consultant remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Consultant or its Subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Department and delivered in a timely manner consistent with the requirements of this Agreement.

If Consultant fails to comply with the foregoing standards, Consultant must, at the City's option, perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure, unless the reason is failure to have and maintain required licensure. See subsection 9.1 (b)(ii) regarding failure to comply with licensure requirements.

3.4 *Personnel*

(a) *Project Management.*

Each party shall designate a Project Manager, who initially shall be Walid Abu-Ghazaleh for Consultant (the "VW Project Manager") and Ben Gomberg for City (the "City Project Manager") (collectively, the "Project Managers"). The VW Project Manager will be considered Key Personnel of VW. The City Project Manager shall serve as the primary point of contact for Consultant with respect to this Agreement. The VW Project Manager shall have overall responsibility for day-to-day management and administration of the Services provided under this Agreement and shall serve as the primary contact for the City with respect to this Agreement. The performance by Consultant of the Services is subject at all times to inspection and review by

the City Project Manager. It shall be the responsibility of Consultant to manage the details of the execution and performance of the Services under this Agreement. The VW Project Manager shall, at the request of City, attend any meeting of the management personnel of the City related to this Agreement or the Services.

(b) Adequate Staffing

Consultant must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. Consultant must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time by notice in writing from Consultant to the City and with prior written consent of the City, not to be unreasonably withheld, conditioned or delayed.

(c) Key Personnel

Consultant must not reassign or replace Key Personnel without the written consent of the City, not to be unreasonably withheld, conditioned or delayed. The only "**Key Personnel**" will be Walid Abu-Ghazaleh, the VW Project Manager. The Department may at any time in writing notify Consultant that the City will no longer accept performance of Services under this Agreement by the Key Personnel listed. Upon notice, Consultant must immediately suspend the VW Project Manager from performing Services under this Agreement and must replace him or them in accordance with the terms of this Agreement. Key Personnel, if any, are identified in Exhibit 7.

(d) Salaries and Wages

Consultant and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Consultant underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Consultant, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Consultant to the respective employees to whom they are due. The parties acknowledge that this Section 3.4(d) is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

3.5 MBE/WBE Commitment

In the performance of this Agreement, including the procurement and lease of materials or equipment, Consultant must abide by the contracting requirements regarding the minority and women's business enterprise commitment requirements of the Municipal Code of Chicago

("Municipal Code"), 2-92-420 et seq. (1990), except to the extent waived by the Chief Procurement Officer and the Special Conditions Regarding MBE/WBE Commitment set forth as an exhibit to this Contract. Consultant's completed Schedules C-1 and D-1 in Exhibit 3, evidencing its compliance with this requirement, are a part of this Agreement, upon acceptance by the Chief Procurement Officer. Consultant must utilize minority and women's business enterprises at the greater of the amounts listed in those Schedules C-1 and D-1 or the percentages listed in them as applied to all payments received from the City.

3.6 Insurance

Consultant must provide and maintain at Consultant's own expense, during the term of this Agreement and any time period following expiration if Consultant is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified in Exhibit 5 of this Agreement, insuring all operations related to this Agreement.

3.7 Indemnification

(a) Consultant must defend, indemnify, and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses, including those related to:

- (i) injury, death or damage of or to any person or property;
- (ii) any infringement or violation of any property right (including any patent, trademark or copyright);
- (iii) Consultant's failure to perform or cause to be performed Consultant's promises and obligations as and when required under this Agreement, including Consultant's failure to perform its obligations to any Subcontractor;
- (iv) the City's exercise of its rights and remedies under Section 9.2 of this Agreement; and
- (v) injuries to or death of any employee of Consultant or any Subcontractor under any workers compensation statute.

(b) "Losses" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to Consultant's breach of this Agreement or to Consultant's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees, except to the extent and until such time as determined by a court of competent jurisdiction to be caused by the negligent or otherwise wrongful acts or omissions of the City.

(c) At the City Corporation Counsel's option, Consultant must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Consultant of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City; provided, however, that if the settlement involves only the payment of money, such consent shall not be unreasonably withheld, conditioned or delayed.

(d) To the extent permissible by law, Consultant waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any Losses, including any claim by any employee of Consultant that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

(e) The indemnities in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during Consultant's performance of Services beyond the term. Consultant acknowledges that the requirements set forth in this section to defend, indemnify, and hold harmless the City are apart from and not limited by the Consultant's duties under this Agreement, including the insurance requirements in Exhibit 5 of this Agreement.

(f) Exclusions.

(i) Subject to subsection (f)(ii) below, regardless of whether or not such damages are known or reasonably foreseeable by Consultant, Consultant, its respective employees, officers, or affiliates will not incur any liability whatsoever, however arising, for any special, consequential, indirect or incidental damages; and

(ii) Notwithstanding any provision to the contrary contained elsewhere in this Agreement, the exclusions from liability set forth in subsection (f)(i) above in this Section 3.7 shall not apply to any damages relating to or arising from: (1) third-party claims that otherwise are covered by Consultant's indemnification obligations under this Agreement; or (2) Consultant's gross negligence; or (3) Consultant's willful misconduct; or (4) Consultant's willful breach (including but not limited to a bad faith termination of the Agreement).

3.8 Ownership of Documents

All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided by Consultant under this Agreement are property of the City, including, as further described in Section 3.9 below, all copyrights inherent in them or their preparation. During performance of its Services, Consultant is responsible for any loss or damage to the Deliverables, data, findings or information while in Consultant's or any

Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of Consultant. If not restorable, Consultant must bear the cost of replacement and of any loss suffered by the City on account of the destruction, as provided in Section 3.7. Notwithstanding anything in this Agreement to the contrary, any Deliverables, data, findings or information in any form or part that are Consultant Intellectual Property, including third party materials, are, as between Consultant and City, and shall continue to be, owned by Consultant. Consultant must identify in writing any such Consultant Intellectual Property (including, but not limited to, ideas, concepts, strategies, research and general plans for the marketing and sale of Sponsorships and advertising panels that are used generally by Consultant in its business and not developed uniquely for the City for purposes of this Agreement) as being owned by or licensed to Consultant on delivery of the same to the City. To the extent that any Deliverables, data, findings or information in any form, contain Consultant Intellectual Property, Consultant will, and hereby does, grant to City, and City accepts from Consultant, a fully paid, non-transferable, perpetual, multi-user, nonexclusive license to use, copy and modify such Deliverables, data, findings or information in any form and in any manner whatsoever.

3.9 Copyright Ownership

Consultant and the City intend that, to the extent permitted by law and subject to the provisions of Section 3.8, the Deliverables to be produced by Consultant at the City's instance and expense under this Agreement are conclusively deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.*, and that the City will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that any Deliverable does not qualify as a "work made for hire", subject to the provisions of Section 3.8, Consultant hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Consultant will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to such copyrights relating to the Deliverables, at the sole expense of the City. Consultant warrants to the City, its successors and assigns, that on the date of transfer Consultant is the lawful owner of good and marketable title in and to the copyrights for such Deliverables and has the legal rights to fully assign them. Consultant further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to such Deliverables. Consultant warrants that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

3.10 Records and Audits

(a) Records

(i) Consultant must deliver or cause to be delivered to the City all documents, including all Deliverables prepared for the City under the terms of this Agreement, promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement. If Consultant fails to make such delivery upon demand, then Consultant must pay to the City any damages the City may sustain by reason of Consultant's failure.

(ii) Consultant must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement.

(b) Audits

(i) Consultant and any of Consultant's Subcontractors must furnish the Department with all information that may be requested pertaining to the performance of the Services. Consultant must keep books, documents, papers, records and accounts in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the City and any other interested governmental agency, at reasonable times during the performance of its Services.

(ii) Consultant must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

(iii) No provision in this Agreement granting the City a right of access to records and documents is intended to impair, limit or affect any right of access to such records and documents which the City would have had in the absence of such provisions.

(iv) The City may in its sole discretion audit the records of Consultant or its Subcontractors, or both, at any time, upon reasonable notice and during normal business hours, during the term of this Agreement or within five (5) years after the Agreement ends, in connection with the goods, work, or Services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of any such audit, it is determined that Consultant or any of its Subcontractors has overcharged the City in the audited period, the City will notify Consultant. Consultant must then promptly reimburse the City for any amounts the City has paid Consultant due to the overcharges and also some or all of the cost of the audit, as follows:

A. If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the Agreement prices, of the goods, work, or Services

provided in the audited period, then the Consultant must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;

B. If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the Agreement prices, of the goods, work, or Services provided in the audited period, then Consultant must reimburse the City for the full cost of the audit and of each subsequent audit.

Failure of Consultant to reimburse the City in accordance with subsection A or B above is an event of default under Section 9.1 of this Agreement, and Consultant will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

3.11 Confidentiality

(a) All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided to Consultant under this Agreement are property of the City and are confidential, except as specifically authorized in this Agreement or as may be required by law. Consultant must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all documents and other information provided to Consultant by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Consultant must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement. Notwithstanding anything to the contrary in this Agreement, the following documents and information provided to Consultant by the City or otherwise in Consultant's possession are not confidential or are not otherwise subject to the confidentiality provisions of this Agreement: information that (i) is now, or hereafter becomes, generally known or available to the public through no breach by Consultant of this Agreement; (ii) was acquired by Consultant before receiving such information from the City; (iii) is acquired by Consultant from a source other than the City, (iv) is developed independently by Consultant without use of any City-provided information; or (v) is required to be disclosed pursuant to law or legal process.

(b) Consultant must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the CFO. Notwithstanding the foregoing, Consultant may include and/or make reference to the City and the Services in its general marketing materials and in its responses to RFPs, RFQs, bids, tenders and similar requests issued by thirds parties.

(c) If Consultant is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Consultant's possession by reason of this Agreement, Consultant must immediately give notice to the CFO and the Corporation Counsel for the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. Consultant, however, is not obligated

to withhold the delivery beyond the time ordered by a court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

(d) HIPAA and AIDS Confidentiality Act. To the extent not defined here the capitalized terms below and in Exhibit 6 will have the same meaning as set forth in the Health Insurance Portability and Accountability Act (Act). See 45 CFR parts 160, 162 and 164. Consultant and all its Subcontractors must comply with the Act and all rules and regulations applicable to it including the Privacy Rule, which sets forth the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164 subparts A and E; the Standards for Electronic Transactions, which are located at 45 CFR parts 160 and 162 and the Security Standards, which are located at 45 CFR parts 160, 162 and 164. Consultant must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16) and the rules and regulations of the Illinois Department of Public Health promulgated under it. If Consultant fails to comply with the applicable provisions under the ACT or the Illinois AIDS Confidentiality Act, such failure will constitute an event of default under this Agreement for which no opportunity for cure will be provided.

Additionally, if Consultant is a Business Associate it must comply with all requirements of the Act applicable to Business Associates including the provisions contained in Exhibit 6.

3.12 Assignments and Subcontracts

(a) Consultant must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement: (i) unless otherwise provided for elsewhere in this Agreement; or (ii) without the express written consent of the Chief Financial Officer, which may not be unreasonably withheld, conditioned or delayed; provided, however, that assignments of assets in general, and not this Agreement specifically, as collateral will not require such consent. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the Chief Financial Officer, including approvals for the use of any Subcontractors, operate to relieve Consultant of any of its obligations or liabilities under this Agreement.

(b) All Subcontractors are subject to the prior approval of the Chief Financial Officer, which may not be unreasonably withheld, conditioned or delayed. Approval for the use of any Subcontractor in performance of the Services is conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to perform the Services in accordance with the terms and conditions of this Agreement to the satisfaction of the Department, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Consultant personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Consultant of any of its obligations or liabilities under this Agreement.

(c) Consultant, upon entering into any agreement with a Subcontractor, must furnish upon request of the Chief Financial Officer or the Department a copy of its agreement.

Consultant must ensure that all subcontracts contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provide that the Subcontractors are subject to all the terms of this Agreement and are subject to the approval of the Department and the Chief Financial Officer. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Services.

(d) Consultant must not transfer or assign any funds or claims due or to become due under this Agreement without the prior written approval of the Chief Financial Officer. The attempted transfer or assignment of any funds, either in whole or in part, or any interest in them, which are due or to become due to Consultant under this Agreement, without such prior written approval, has no effect upon the City.

(e) Under Section 2-92-245 of the Municipal Code, the Chief Procurement Officer may make direct payments to Subcontractors for Services performed under this Agreement. Any such payment has the same effect as if the City had paid Consultant that amount directly. Such payment by the City to Consultant's Subcontractor under no circumstances operates to relieve Consultant of any of its obligations or liabilities under this Agreement. This section is solely for the benefit of the City and does not grant any third party beneficiary rights.

(f) The City reserves the right to assign or otherwise transfer all or any part of its interests under this Agreement to any successor.

ARTICLE 4. DURATION OF AGREEMENT

4.1 Term of Performance

This Agreement takes effect as of the Effective Date and continues, except as provided under Article 9, until the fifth anniversary of the Effective Date, as that date may be extended under Section 4.3.

4.2 Timeliness of Performance

(a) Consultant must provide the Services and Deliverables within the time limits required under any task order or request for services pursuant to the provisions of Section 3.1 and Exhibit 1. **Further, Consultant acknowledges that TIME IS OF THE ESSENCE and that the failure of Consultant to comply with the required time limits may result in economic or other losses to the City.**

(b) Neither Consultant nor Consultant's agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Consultant by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

4.3 Agreement Extension Option

This Agreement will be in effect for the dates indicated within this Agreement for a five-year term ("Initial Term"). The Chief Financial Officer may exercise the City's option to extend this Agreement for up to two (2) extension periods of five (5) years each, contingent upon the appropriation of sufficient funds for the procurement of Services provided for in this Agreement.

If the City wishes to exercise its extension option(s), the Chief Financial Officer will give the Consultant notice ninety (90) days prior to the relevant expiration date, in writing, that the City is exercising its option to renew the Agreement for the approaching option period ("Extension Notice"). The date on which the Chief Financial Officer gives the Extension Notice is the date the Extension Notice is mailed, if it is mailed, or the date the Extension Notice is delivered, if sent by courier or messenger service. Consultant must give City notice that it objects to such Extension Notice within five (5) business days of receipt, or such Extension Notice will be deemed accepted. If Consultant objects to such Extension Notice, the City may still invoke the one hundred eighty-one (181) calendar-day period set forth below, which is not subject to Consultant's consent.

The Chief Financial Officer may give the Consultant notice sixty (60) days prior to the relevant expiration date that the City is exercising its option to extend the Agreement for a period of no more than one hundred eighty-one (181) calendar days, either (i) in lieu of an option period or (ii) following the exhaustion of all option periods, for the purpose of providing continuity of service while procuring a replacement contract.

ARTICLE 5. COMPENSATION

Consultant will be compensated for the Services on a percentage-of-revenues-produced as explained more fully in Exhibit 2.

ARTICLE 6. DISPUTES

[INTENTIONALLY OMITTED]

ARTICLE 7. COMPLIANCE WITH ALL LAWS

7.1 Compliance with All Laws Generally

(a) Consultant must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, including those set forth in this Article 7, and Consultant must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Consultant must require all Subcontractors to do so, also. Further, Consultant must execute an online Economic Disclosure Statement and Affidavit ("EDS") which includes a Disclosure of Retained Parties. Submit an electronically signed, one page Certificate of Filing to Exhibit 4 which validates that the EDS has been filed. The web address to submit your EDS is

<http://webapps.cityofchicago.org/EDSWeb>. Notwithstanding acceptance by the City of the EDS, Consultant's failure in the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Consultant must promptly update its online EDS(s) with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate.

(b) Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

(c) The Consultant will comply with Section 2-154-20 of the Municipal Code of Chicago. Failure by the Consultant or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of this Agreement.

(d) Without limiting the generality of the foregoing, Consultant shall abide by all federal requirements pertaining to 23 USC Section 149(e) under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and all related CMAQ Program rules and regulations. At the request of the City of Chicago or IDOT, Company shall certify in writing that Company has complied in all aspects with the CMAQ Program requirements as they relate to the Bicycle Sharing Project; such certification shall be signed by an officer of Company.

7.2 Nondiscrimination

(a) Consultant

Consultant must comply with applicable federal, state, and local laws and related regulations prohibiting discrimination against individuals and groups. If this Agreement is federally funded in whole or in part, additional provisions related to nondiscrimination may be set forth in Exhibit 8.

(i) Federal Requirements

Consultant must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Consultant's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e *et seq.* (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* (1990); and all other applicable federal statutes, regulations and other laws.

(ii) **State Requirements**

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A. Furthermore, Consultant must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.* (1990), as amended, and all other applicable state statutes, regulations and other laws.

(iii) **City Requirements**

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 *et seq.* of the Municipal Code of Chicago (1990), as amended, and all other applicable City ordinances and rules.

(b) **Subcontractors**

Consultant must incorporate all of this Section 7.2 by reference in all agreements entered into with any suppliers of materials, furnisher of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement. Further, Consultant must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the federal, state, and local agencies charged with enforcing such laws and regulations, including the Chicago Commission on Human Relations.

7.3 Inspector General

It is the duty of any bidder, proposer or Consultant, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Consultant, Subcontractor or such applicant to cooperate with the Inspector General or Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 or 2-55, respectively, of the Municipal Code.

Consultant understands and will abide by all provisions of Chapter 2-56 and 2-55 of the Municipal Code. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

7.4 *[Intentionally Omitted]*

7.5 *MacBride Ordinance*

The City of Chicago through the passage of the MacBride Principles Ordinance seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.

In accordance with Section 2-92-580 of the Municipal Code of the City of Chicago, if Consultant conducts any business operations in Northern Ireland, the Consultant must make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

The provisions of this Section 7.5 do not apply to contracts for which the City receives funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

7.6 *Business Relationships with Elected Officials*

Pursuant to § 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by an elected official with respect to this Agreement is grounds for termination of this Agreement. The term business relationship is defined as set forth in § 2-156-080 of the Municipal Code.

Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office

or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" shall not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

7.7 Chicago "Living Wage" Ordinance

(a) Section 2-92-610 of the Municipal Code provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("**Covered Employees**"). Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

(i) If Consultant has 25 or more full-time employees, and .

(ii) If at any time during the performance of this Agreement, Consultant and/or any Subcontractor or any other entity that provides any portion of the Services (collectively "**Performing Parties**") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then

(iii) Consultant must pay its Covered Employees, and must ensure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "**Base Wage**") for all Services performed under this Agreement.

(b) Consultant's obligation to pay, and to ensure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (a)(i) and (a)(ii) above are met, and will continue until the end of the term of this Agreement.

(c) As of July 1, 2012, the Base Wage is \$11.53 per hour, and each July 1 thereafter, the Base Wage will be adjusted using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. The currently applicable Base Wage is available from the Department of Procurement Services. At all times during the term of this Agreement, Consultant and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Consultant and all other Performing Parties must pay the prevailing wage rates.

(d) Consultant must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Consultant agrees to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by Consultant or by a Subcontractor, have been paid the

Base Wage, upon the City's request for such documentation. The City may independently audit Consultant and/or Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

(e) Not-for-Profit Corporations: If Consultant is a corporation having federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is recognized under Illinois not-for-profit law, then the provisions of subsections (a) through (d) above do not apply.

7.8 *Environmental Warranties and Representations*

In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Consultant warrants and represents that it, and to the best of its knowledge, its subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid waste;
- 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

During the period while this Agreement is executory, Consultant's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the Chief Financial Officer. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity.

This section does not limit Consultant's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement.

Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect Consultant's eligibility for future contract awards.

7.9 *Prohibition on Certain Contributions*

No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly or indirectly has an

ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

Contractor represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Contractor or the date the Contractor approached the City, as applicable, regarding the formulation of this Contract, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Contractor shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Contract, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Contract, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Contractor violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Contract resulting from this specification, the CPO may reject Contractor's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Contractor and the City that is (i) formed under the authority of MCC Ch. 2-92; (ii) for the purchase, sale or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council.

"Contribution" means a "political contribution" as defined in MCC Ch. 2-156, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in MCC Ch. 2-156, as amended.

7.10 *Firms Owned or Operated by Individuals with Disabilities*

The City encourages consultants to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by Section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

7.11 *Deemed Inclusion* ***[Intentionally Omitted]***

7.12 *False Statements*

(a) 1-21-010 False Statements

Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly falsifies any statement of material fact made in connection with an application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the city sustains because of the person's violation of this section. A person who violates this section shall also be liable for the city's litigation and collection costs and attorney's fees.

The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code. (Added Coun. J. 12-15-04, p. 39915, § 1)

(b) 1-21-020 Aiding and abetting.

Any person who aids, abets, incites, compels or coerces the doing of any act prohibited by this chapter shall be liable to the city for the same penalties for the violation. (Added Coun. J. 12-15-04, p. 39915, § 1)

(c) 1-21-030 Enforcement.

In addition to any other means authorized by law, the corporation counsel may enforce this chapter by instituting an action with the department of administrative hearings. (Added Coun. J. 12-15-04, p. 39915, § 1)

ARTICLE 8. SPECIAL CONDITIONS

8.1 *Warranties and Representations*

In connection with signing and carrying out this Agreement, Consultant:

(a) warrants that Consultant is appropriately licensed under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Consultant is not appropriately licensed;

(b) warrants it is financially solvent; it and each of its employees, agents and Subcontractors that perform Services under this Agreement are competent to perform the Services required under this Agreement; and Consultant is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;

(c) warrants that it will not knowingly use the services of any ineligible contractor or Subcontractor for any purpose in the performance of its Services under this Agreement;

(d) warrants that Consultant and its Subcontractors are not in default at the time this Agreement is signed, and have not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City ;

(e) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Consultant warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;

(f) represents that Consultant and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of § 2-92-320 of the Municipal Code, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;

(g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 9.2 and 9.3 of this Agreement; and

(h) warrants and represents that neither Consultant nor an Affiliate of Consultant (as defined below) appears on the Specially Designated Nationals List, the Denied Persons List, the unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce (or their successors), or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order

or judgment. "Affiliate of Consultant" means a person or entity that directly (or indirectly through one or more intermediaries) controls, is controlled by or is under common control with Consultant. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner whatsoever that results in control in fact by that other person or entity (either acting individually or acting jointly or in concert with others) whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

8.2 Ethics

(a) In addition to the foregoing warranties and representations, Consultant warrants:

(i) no officer, agent or employee of the City is employed by Consultant or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code .

(ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to Consultant or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

(b) Consultant further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.

8.3 Joint and Several Liability

If Consultant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Consultant is the joint and several obligation or undertaking of each such individual or other legal entity.

8.4 Business Documents

At the request of the City, Consultant must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

8.5 Conflicts of Interest

(a) No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

(b) Consultant represents that it, and to the best of its knowledge, its Subcontractors if any (Consultant and Subcontractors will be collectively referred to in this Section 8.5 as "**Consulting Parties**"), presently have no direct or indirect interest and will not acquire any direct or indirect interest in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Upon the request of the City, Consulting Parties must disclose to the City their past client lists and the names of any clients with whom they have an ongoing relationship. Consulting Parties are not permitted to perform any Services for the City on applications or other documents submitted to the City by any of Consulting Parties' past or present clients. If Consulting Parties become aware of a conflict, they must immediately stop work on the assignment causing the conflict and notify the City.

(d) Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

(e) Further, Consulting Parties must not assign any person having any conflicting interest to perform any Services under this Agreement or have access to any confidential information, as described in Section 3.11 of this Agreement. If the City, by the CFO in his reasonable judgment, determines that any of Consulting Parties' services for others conflict with the Services that Consulting Parties are to render for the City under this Agreement, Consulting Parties must terminate such other services immediately upon request of the City.

(f) Furthermore, if any federal funds are to be used to compensate or reimburse Consultant under this Agreement, Consultant represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C. § 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, Consultant must execute a Certification Regarding Lobbying, which is part of the EDS and incorporated by reference as if fully set forth here.

8.6 *Non-Liability of Public Officials*

Consultant and any assignee or Subcontractor of Consultant must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

8.7 *EDS / Certification Regarding Suspension and Debarment*

Consultant certifies, as further evidenced in the EDS attached as Exhibit 4, by its acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. Consultant further agrees by executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. If Consultant or any lower tier participant is unable to certify to this statement, it must attach an explanation to the Agreement.

**ARTICLE 9. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION
AND RIGHT TO OFFSET**

9.1 Events of Default Defined

The following constitute events of default:

(a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Consultant to the City.

(b) Consultant's failure to perform any of its obligations under this Agreement including the following:

(i) Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services;

(ii) Failure to have and maintain all professional licenses required by law to perform the Services;

(iii) Failure to timely perform the Services;

(iv) Failure to perform the Services in a manner reasonably satisfactory to the CFO or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;

(v) Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;

(vi) Discontinuance of the Services for reasons within Consultant's reasonable control;

(vii) Failure to comply with Section 7.1 in the performance of the Agreement;

(viii) Failure promptly to update EDS(s) furnished in connection with this Agreement when the information or responses contained in it or them is no longer complete or accurate; and

(ix) Any other acts specifically stated in this Agreement as constituting an act of default.

(c) Any change in control of Consultant without the prior written approval of the Chief Financial Officer (when such prior approval is permissible by law), which approval the Chief Financial Officer will not unreasonably withhold.

(d) Consultant's default under any other agreement it may presently have or may enter into with the City for the duration of this Agreement. Consultant acknowledges that in the

event of a default under this Agreement the City may also declare a default under any such other agreements.

(e) Consultant's violation of City ordinance(s) unrelated to performance under the Agreement such that, in the opinion of the Chief Financial Officer, it indicates a willful or reckless disregard for City laws and regulations.

(f) Consultant's failure to update its EDS to reflect any changes in information, including changes in ownership, and to provide it to the City as provided under Section 7.1(a).

9.2 Remedies

(a) Notices. The occurrence of any event of default permits the City, at the City's sole option, to declare Consultant in default. The Chief Financial Officer will give Consultant an opportunity to cure the default, if such default is capable of cure, within 30 days of Consultant's receipt of notice of such default from the Chief Financial Officer unless such cure period is extended by the Chief Financial Officer. Whether to declare Consultant in default is within the sole discretion of the Chief Financial Officer and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Agreement.

The Chief Financial Officer will give Consultant written notice of the default in the form of a cure notice ("**Cure Notice**"), or, if such default is not capable of cure, a default notice ("**Default Notice**"). The Chief Financial Officer may give a Default Notice if Consultant fails to effect a cure within the cure period given in a Cure Notice. If the Chief Financial Officer gives a Default Notice, she will also indicate any present intent she may have to terminate this Agreement, and the decision to terminate is final and effective upon the date stated in the Notice. If the Chief Financial Officer decides not to terminate, this decision will not preclude her from later deciding to terminate the Agreement in a later notice, which will be final and effective on the date set forth in the notice. When a Default Notice with intent to terminate is given as provided in this Section 9.2 and Article 11, Consultant must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City.

(b) Exercise of Remedies. After giving a Default Notice, the City may invoke any or all of the following remedies:

(i) The right to take over and complete the Services, or any part of them, at Consultant's expense and as agent for Consultant, either directly or through others, and bill Consultant for the cost of the Services, and Consultant must pay the difference between the total amount of this bill and the amount the City would have paid Consultant under the terms and conditions of this Agreement for the Services that were assumed by the City as agent for Consultant under this Section 9.2;

(ii) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;

(iii) The right of specific performance, an injunction or any other appropriate equitable remedy;

(iv) The right to money damages;

(v) The right to withhold all or any part of Consultant's compensation under this Agreement;

(vi) The right to deem Consultant non-responsible in future contracts to be awarded by the City;

(vii) The right to declare default on any other contract or agreement Consultant may have with the City.

(c) **City's Reservation of Rights.** If the Chief Financial Officer considers it to be in the City's best interests, he may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Consultant to continue to provide the Services despite one or more events of default, Consultant is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

(d) **Non-Exclusivity of Remedies.** The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.

9.3 Early Termination

(a) In addition to termination under Sections 9.1 and 9.2 of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the City to Consultant. The City will give notice to Consultant in accordance with the provisions of Article 11. The effective date of termination will be the date stated in the notice; provided, however that such date shall not be less than ninety (90) days following the receipt of the notice by Consultant ("Termination Notice Period"). Consultant shall cooperate fully with City and third parties and shall take all actions reasonably requested by City or necessary to accomplish, by no later than ninety (90) days after the date of termination, a smooth, complete transition of responsibility from the Consultant. Consultant shall provide to City such documentation and other information as is sufficient to enable City, or a third party, to fully assume the Services. If the City elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City effective 90 days after the date the notice is considered received as provided under Article 11 of this Agreement (if no date is given) or upon the effective date stated in the notice.

(b) After the notice is received, Consultant must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun and to perform sales contracts and other contracts that have been entered into prior to the start of the Termination Notice Period. Consultant shall not enter into new sales or other contracts during the Termination Notice Period. Payment for any Services actually and satisfactorily performed before the end of the Termination Notice Period is on the same basis as set forth in Article 5 and Exhibit 2 to this Agreement, but if any compensation is described or provided for on the basis of a period longer than 90 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services.

(c) Notwithstanding Subsections 9.3 (a) and (b) above, the City may early terminate this Agreement at the end of the Go Shop Period, as described more fully in Exhibit 2, with no further obligation to Consultant, except for agreements that are closed during the Tail Period as set forth in Exhibit 2, including but not limited no obligations for wind-down periods of any kind.

(d) Consultant must include in its contracts with Subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the City arising from termination of subcontracts after the early termination. Consultant will not be entitled to make any early termination claims against the City resulting from any Subcontractor's claims against Consultant or the City.

(e) If the City's election to terminate this Agreement for default under Sections 9.1 and 9.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 9.3.

9.4 *Suspension*

The City may at any time request that Consultant suspend its Services, or any part of them, by giving 15 days prior written notice to Consultant or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Consultant must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Chief Financial Officer and such equitable extension of time as may be mutually agreed upon by the Chief Financial Officer and Consultant when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Consultant as a result of recommencing the Services must be treated in accordance with the compensation provisions under Article 5 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any one year of this Agreement. If the total number of days of suspension exceeds 45 days, Consultant by written notice to the City may treat the suspension as an early termination of this Agreement under Section 9.3.

9.5 *Right to Offset*

(a) In connection with Consultant's performance under this Agreement, the City may offset any incremental costs and other damages the City incurs in any or all of the following circumstances:

(i) if the City terminates this Agreement for default or any other reason resulting from Consultant's performance or non-performance;

(ii) if the City exercises any of its remedies under Section 9.2 of this Agreement;

(iii) if the City has any credits due or has made any overpayments under this Agreement.

The City may offset these incremental costs and other damages by use of any payment due for Services completed before the City terminated this Agreement or before the City exercised any remedies. If the amount offset is insufficient to cover those incremental costs and other damages, Consultant is liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

(b) As provided under § 2-92-380 of the Municipal Code, the City may set off from Consultant's compensation under this Agreement an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and the amount of any debt owed by Consultant to the City as those italicized terms are defined in the Municipal Code.

(c) In connection with any liquidated or unliquidated claims against Consultant, and without breaching this Agreement, the City may set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of any liquidated or unliquidated claims that the City has against Consultant unrelated to this Agreement. When the City's claims against Consultant are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will reimburse Consultant to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

ARTICLE 10. GENERAL CONDITIONS

10.1 *Entire Agreement*

(a) General

This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other terms, conditions, warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not addressed in this Agreement.

(b) No Collateral Agreements

Consultant acknowledges that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Consultant to enter into this Agreement or has been relied upon by Consultant, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

(c) No Omissions

Consultant acknowledges that Consultant was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Consultant did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Consultant relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

10.2 Counterparts

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

10.3 Changes, Modifications, and Amendments

No change, modification, or amendment of this Agreement, or any part hereof, is valid unless stipulated in writing and signed by the Mayor, Comptroller, and Chief Financial Officer of the City. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 10.3. This Section, 10.3, does not apply, however, to Agreement extensions governed by section 4.3, Agreement Extension Option.

10.4 Governing Law and Jurisdiction

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Consultant irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Service of process on Consultant may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Consultant, or by personal delivery on any officer, director, or managing or general agent of Consultant. If any action is brought by Consultant against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

10.5 Severability

If any provision of this Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

10.6 Assigns

All of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

10.7 Cooperation

Consultant must at all times cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Consultant must make commercially reasonable efforts to ensure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

10.8 Waiver

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance.

Whenever under this Agreement the City by a proper authority waives Consultant's performance in any respect or waives a requirement or condition to either the City's or

Consultant's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Consultant in writing.

10.9 *Independent Contractor*

(a) This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Consultant and the City. The rights and the obligations of the parties are only those set forth in this Agreement. Consultant must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of the City.

(b) This Agreement is between the City and an independent contractor and, if Consultant is an individual, nothing provided for under this Agreement constitutes or implies an employer-employee relationship such that:

(i) The City will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with the Consultant performing the Services required under this Agreement.

(ii) Consultant is not entitled to membership in any City Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City.

The City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Consultant.

(c) **Shakman Accord**

(i) The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the June 24, 2011 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(ii) Consultant is aware that City policy prohibits City employees from directing any individual to apply for a position with Consultant, either as an employee or as a subcontractor, and from directing Consultant to hire an individual as an employee or as a subcontractor. Accordingly, Consultant must follow its own hiring and contracting

procedures, without being influenced by City employees. Any and all personnel provided by Consultant under this Agreement are employees or subcontractors of Consultant, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Consultant.

(iii) Consultant will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(iv) In the event of any communication to Consultant by a City employee or City official in violation of Section 10.10(c)(ii) above, or advocating a violation of Section 10.10(c)(iii) above, Consultant will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Agreement. Consultant will also cooperate with inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to the contract.

10.10 Electronic Ordering and Invoices

The Consultant shall cooperate in good faith with the City in implementing electronic ordering and invoicing, including but not limited to catalogs, purchase orders, releases, and invoices. Consultant shall accept electronic purchase orders and releases upon request of the Chief Financial Officer. Consultant shall provide the City electronic catalogs, copies of invoices and other electronic documents upon request. The electronic ordering and invoice documents shall be in a format specified by the City and transmitted by an electronic means specified by the City. Such electronic means may include, but are not limited to, disks, e-mail, EDI, FTP, web sites, and third party electronic services. The Chief Financial Officer reserves the right to change the document format and/or the means of transmission upon written notice to the Consultant. Consultant shall ensure that the essential information, as determined by the Chief Financial Officer, in the electronic document, corresponds to that information submitted by the Consultant in its paper documents. The electronic documents shall be in addition to paper documents required by this contract, however, by written notice to the Consultant, the Chief Financial Officer may deem any or all of the electronic ordering and invoice documents the official documents and/or eliminate the requirement for paper ordering and invoice documents.

10.11 Participation by Other Local Government Agencies

Other local government agencies may be eligible to participate in this agreement pursuant to the terms and conditions of this Contract if such agencies are authorized, by law or their governing bodies, to execute such purchases, and if such authorization is allowed by the City of Chicago's Chief Procurement Officer, and if such purchases have no net adverse effect on the City of Chicago, and result in no diminished services from the Consultant to the City's user departments pursuant to such purchases. Examples of such Local Government Agencies are: Board of Education, Chicago Park District, City Colleges of Chicago, Chicago Transit Authority, Chicago Housing Authority, Chicago Board of Elections, Metropolitan Pier and Exposition Authority (McCormick Place, Navy Pier), Cook County and the Municipal Courts. Said purchases shall be made upon the issuance of a purchase order directly from the Local Government Agency. The City will not be responsible for payment of any amounts owed by any other Local Government Agencies, and will have no liability for the acts or omissions of any other Local Government Agency.

ARTICLE 11. NOTICES

Notices provided for in this Agreement, unless provided for otherwise in this Agreement, must be given in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the City: Chicago Department of Transportation
121 North LaSalle St., Rm 107
City Hall
Chicago, Illinois 60602
Attention: CFO

and

Department of Finance
33 North LaSalle Street, Suite 700
Chicago, Illinois 60602
Attention: Chief Financial Officer

With Copies to: Department of Law
Room 600, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Corporation Counsel

If to Consultant: Van Wagner Communications, LLC
560 W. Washington Blvd., Suite 200
Chicago, IL 60661
Attention: Walid Abu-Ghazaleh

With Copies to: Van Wagner Communications, LLC
800 Third Avenue, 28th Floor
New York, NY 10022
Attn: Richard A. Silverton

With Copies to: Van Wagner Communications, LLC
800 Third Avenue, 28th Floor
New York, NY 10022
Attn: General Counsel

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 11. Notices delivered by mail are considered received three days after mailing in accordance with this Article 11. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

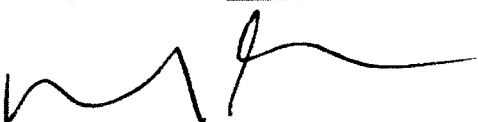
ARTICLE 12. AUTHORITY

Execution of this Agreement by Consultant is authorized by a resolution of its Manager, or similar governing document, and the signature(s) of each person signing on behalf of Consultant have been made with complete and full authority to commit Consultant to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

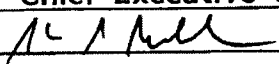
[Signature Pages, Exhibits and Schedules follow.]

CONTRACT SIGNATURE PAGE

Contract No: _____
Specification No: 102885
Vendor Name: Van Wagner Communications, LLC
Total Amount (Value): Revenue Share / Revenue Generating
Fund Chargeable: N/A



(Consultant)

By: Richard M. Schaps
Its: Chief Executive Officer
Attest:  _____


State of New York
County of New York

This instrument was acknowledged before me on this 24th day of April, 2013
signed by Richard M. Schaps as President (or other authorized officer) and
attested by Steven S. Pretsfelder as Secretary of Van Wagner (Corporation
Name) Communications, LLC
(Seal)



Notary Public Signature
Commission Expires: 2014

CITY OF CHICAGO



Chief Financial Officer
Date 5/23/13

SUSAN TYSOWSKI
NOTARY PUBLIC-STATE OF NEW YORK
No. 02TY6079334
Qualified in New York County
My Commission Expires August 26, 2014

EXHIBIT 1 SCOPE OF SERVICES

Consultant must act as the City of Chicago's broker for the sale and marketing of sponsorships related to, and outdoor advertising on, the City's bicycle sharing system (the "System") on the terms detailed more fully below (the "Services").

Consultant will be responsible for all of the Services described in this Agreement. The City will not, under any circumstances, be responsible for the payment of any costs or expenses in connection with the performance of this Agreement, with the limited exception of the cost of producing advertisements posted at the direction of the City.

All capitalized terms used but not defined in this Exhibit 1 which are defined in the Agreement (including Exhibit 2 thereto), shall have the same meanings in this Exhibit 1 as in the Agreement (including Exhibit 2 thereto).

I. Definitions

All capitalized terms used but not defined in this Exhibit 1 which are defined in the Agreement (including Exhibit 2 thereto) shall have the same meaning in this Exhibit as in the Agreement (including Exhibit 2 thereto).

"Ad Panel" means the static (i.e., not electronic) space on Stations for advertising measuring approximately 3 feet by 5 feet installed on the exterior portion of the Station facing away from the bicycle docks. Should the City change the Ad Panels to electronic ad panels, such electronic ad panels will be considered Ad Panels for the purposes of this Agreement.

"Equipment" means all physical components of the System, including without limitation bicycles, docks, terminals, Station batteries, bicycle and Station spare parts and all necessary cables.

"Go Shop Period" means the period beginning on the Effective Date and ending on June 30, 2013.

"Sponsorship Opportunities" means the assets, events, promotions and key dates listed in Attachment A to this Exhibit 1.

"Station" means that portion of the Equipment on which there is an Ad Panel.

II. Sponsorships

The City desires to generate revenue from the marketing and sale of Sponsorship Opportunities, including but not limited to, revenue from a primary System sponsor that will agree to be associated with many of the Sponsorship Opportunities and, if applicable, revenue from secondary sponsors of Sponsorship Opportunities not dedicated to a primary sponsor ("Sponsors" or "Sponsorships" as the case may be).

The City acknowledges and agrees that, due to the desire of the City to secure a Sponsor or Sponsors as quickly as possible, Consultant may perform many of the Services described in this Exhibit and create

and deliver to the City certain of the reports and other deliverables required by this Exhibit, concurrently or otherwise not in the sequence described or otherwise anticipated by this Exhibit.

During the Go Shop Period, Consultant shall have the exclusive right to market and sell the Sponsorship Opportunities, subject to City's prior review and approval of Consultant's marketing materials for the Sponsorship Opportunities. The Sponsorship Opportunities list in Attachment 1 is illustrative and may be expanded or restricted in City's sole discretion. Consultant may bundle the Sponsorship Opportunities into one package for a primary Sponsor or several (e.g., a primary Sponsor package and some secondary Sponsor packages) in order to receive the optimal valuation for the Sponsorship Opportunities. All terms of any Sponsorship are subject to final approval of the City.

If Consultant is unable to present a package or packages of Sponsorships with terms acceptable to the City, in City's sole determination, by the end of the Go Shop Period, the exclusive right stated above shall expire. Upon expiration of such exclusivity, the City shall be entitled, in its sole discretion, to (i) seek Sponsors or Sponsorships on its own or through third parties, and/or (ii) terminate all or a portion of this Agreement.

This Agreement does not grant to Consultant any rights (exclusive or otherwise) to perform any services other than the Services or receive compensation for any City sponsorships other than the Sponsorships described in this Agreement. Consultant's exclusive rights during the Go Shop Period will not preclude the City from pursuing sponsorships, on its own or through a third party, (i) that are not Sponsorship Opportunities or not related to the System, or (ii) if Consultant elects in writing not to pursue a potential Sponsorship Opportunity during the Go Shop Period. If Consultant makes such an election not to pursue a Sponsorship Opportunity, Consultant will not be entitled to any compensation should the City or a third party conclude a Sponsorship deal.

A. Strategic Preparation. Consultant must prepare a strategic plan for Sponsorships that includes:

- 1) Identify potential Sponsorship packages. Consultant must identify, as soon as practicable, approximately 30 potential sponsors. After review of Consultant's potential sponsor list, the City may add other potential sponsors to the list.
- 2) A confidential valuation using comparable deals to set internal expectations on the potential value of Sponsorships. Among other criteria Consultant may use, Consultant must use:
 - (i) Recent comparable deals, including New York, Boston and London;
 - (ii) Individual asset valuations.
- 3) A comprehensive strategic sales plan, including market timing, targeting, asset architecture, and pricing, including:
 - (i) Identifying types of potential sponsors in relation to specific goals;
 - (ii) Recommending best approach to attract desired Sponsorships in relation to goals;
 - (ii) Recommending best approach to optimize value and/or other benefits for the City (i.e. packaging of assets or certain methodologies);
 - (iv) Identifying associated risk and potential limitations (legal or otherwise) that would impact the marketability of Sponsorship Opportunities.

B. Development of Presentation and Marketing Materials. Consultant must prepare a marketing plan for Sponsorships that includes:

- 1) Asset Architecture and Valuation of Sponsorship, including related Advertising: Consultant must prepare an analysis of Sponsorship Opportunities, including preparation of an asset architecture that documents all of the combinations of Sponsorship Opportunities offered as a package (including offering to sponsors outdoor advertising space that would otherwise be sold to non-sponsors) and prepare valuations based on different combinations of this architecture.
- 2) Narrative: Consultant must prepare a simple, structured narrative for illuminating the opportunity to potential sponsors effectively, focused on the unique opportunities a Sponsorship presents.
- 3) Presentation: Creation of a unique sales presentation using the narrative to convey visually the opportunity to potential sponsors. Documents prepared pursuant to this subsection B.3) and B.2) above shall be the "Marketing Materials" for the purposes of this Agreement. Marketing Materials must be approved by the City.
- 4) Method of Approach:
 - (i) Develop an approach that will ensure that the solicitation of sponsors is conducted in an open and competitive manner;
 - (ii) Identify the role of the City in sponsor solicitation.
- 5) City reserves the right to reject any potential sponsor, proposed marketing plans/presentations or any decisions deemed not in the best interest of the City.

C. Sponsorship Sales and Closing Process.

- 1) Consultant must present to the City a target list of potential sponsors.
- 2) Consultant must conduct initial outreach efforts to gauge interest of potential sponsors.
- 3) Based on the interest in the initial outreach, Consultant must, with City approval, narrow the target list and enter discussions with potential sponsors.
- 4) Consultant must schedule and present narratives and presentations to potential sponsors.
- 5) Consultant must follow-up with all potential sponsors.
- 6) If requested by the City, Consultant must be involved in the relevant aspects of the closing process, including:
 - (i) Drafting and negotiating agreements between sponsors and City;
 - (ii) Creation of evaluation criteria

(iii) Advice on order of closing, including legal, PR, proxy negotiation and on-the-fly strategic direction to contract finalization.

7) Consultant will involve, and take direction from, the City in all aspects of the Sponsorship sales and closing process. The final selection of all sponsors will be made by the City.

D. Implementation. Consultant must assist the City and Alta in implementing the Sponsorship programs, including communications strategies to announce Sponsorships that provide the City with maximum positive exposure.

III. Outdoor Advertising

The City desires to generate revenue from outdoor advertising on Ad Panels on Stations. Outdoor advertising on Ad Panels will be covered by this Section III, except where such provisions are inapplicable due to the terms of a Sponsorship agreement. The City will consult with Consultant if City considers whether electronic technology should be incorporated into the Ad Panels. The final determination of whether electronic technology will be incorporated into the Ad Panels will be made solely by City after such consultation. Sections A and C below are applicable regardless of the manner of sale of the Ad Panels. Consultant will be responsible for selling outdoor advertising on applicable Ad Panels; provided, however, that up to 5% of Ad Panels at all times will be reserved for public service announcements. City and Consultant will, at the beginning of each calendar quarter, meet to agree on the total number of panels to be made available to the City for public service announcements that quarter, the locations of such panels and the amount of time and specific time periods that such panels will be available to the City for such purposes. In making such determinations the City and the Consultant will take into account and balance as equitably as is practicable the City's needs, the commercial needs of sponsors and/or advertisers, and other relevant factors. The remaining 95% of Ad Panels will be considered "Eligible System Assets."

A. Station Location and Advertising Requirements/Specifications.

- 1) Consultant must assist the City and Alta in the identification of optimal locations for the System Stations, including identifying new locations as the System grows over time;
- 2) Consultant must assist the City and Alta in the determination of the technical specifications of the advertising display units;
- 3) Consultant must enter the locations of each of the stations into Consultant's proprietary inventory system;
- 4) Consultant must obtain all necessary advertising permits, if any, and furnish copies of the permits to the City before the activities covered by the permits is started. Consultant must pay any applicable fees required for Consultant to perform the Services, and Consultant must abide by all applicable municipal ordinances. Obtaining permits for the placement of Stations is outside the scope of this Agreement.
- 5) Asset Architecture and Valuation of Outdoor Advertising: Consultant must prepare an analysis of Eligible System Assets, including preparation of an asset architecture that documents all of the outdoor advertising opportunities for Eligible System Assets and related programs. Consultant must also prepare valuations based on different

combinations of this architecture. This Subsection 5 is inapplicable if all Eligible System Assets are sold as part of a System-wide Sponsorship.

B. Sale of Advertising.

1) To the extent that the Ad Panels are available for outdoor advertising (i.e., not sold to a primary sponsor as part of a Sponsorship) and City does not terminate this portion of the Agreement at the end of the Go Shop Period as specified in Section I above or otherwise exercise early termination rights, Consultant shall have the exclusive license to market and sell advertising on Eligible System Assets.

2) Consultant must prepare and submit marketing materials to the City Project Manager for subsequent dissemination to potential advertisers. Prior City approval of such materials is not required, but the City may at any time prohibit the use of such materials for any reason.

3) Consultant must launch a sales effort for outdoor advertising on the System within the buying community.

4) Consultant must submit all advertising to the City for approval. The City will designate up to three personnel for such submission; all designated personnel must receive the advertising submission. The City shall have 5 business days to reject advertising if the advertising does not comply with the Advertising Standards set forth in Exhibit 6 of this Agreement or is otherwise found objectionable in City's reasonable determination ("Rejection Period"); provided, however, that if Consultant hasn't received clearance within 3 business days, it must resubmit the advertising notice to the same City personnel with a legend that it is the second notice. Such resubmission will not extend the Rejection Period. If the City rejects advertising it must promptly explain in writing to Consultant the reasons for such rejection. If such submission is not rejected by the City within the Rejection Period, such advertising will be deemed accepted. Regardless of any acceptance or deemed acceptance by the City, all advertising must comply with the Advertising Standards set forth in Exhibit 6 of this Agreement. Any outdoor advertising that violates this subsection or the Advertising Standards is a default and grounds for termination.

5) Consultant shall keep full, complete and proper books, records and accounts of its business activity with respect to the sale of outdoor advertising as specified in Exhibit 2.

6) Consultant must sell advertising on the Ad Panels on an ongoing basis.

C. Installation, Inspection, Notification and Removal.

1) Consultant must install and remove the advertising copy on an ongoing basis;

2) Consultant must monitor the condition of the Ad Panels on an ongoing basis (sticker, graffiti, glass management);

3) Consultant must promptly notify the City and/or Alta of any issues involving Ad Panels that are within the power of the City and/or Alta to correct, including obstructions and illumination.

D. Revenue Collection and Reporting.

1) Consultant must send invoices to, and collect payments from, advertisers, including agencies, buying services and direct-buy clients;

2) Consultant must submit to the City quarterly and year-to-date basis reports of all gross outdoor advertising revenue as specified in the Fee Schedule, Exhibit 2.

**Exhibit 2
Compensation**

Sponsorship and Advertising Revenue

I. Sponsorship Revenue

A. Definitions

All capitalized terms used but not defined in this Exhibit 2 which are defined in the Agreement (including Exhibit 1 thereto) shall have the same meaning in this Exhibit as in the Agreement (including Exhibit 1 thereto).

"Illumination Standards" means, with respect to the Ad Panels on the Stations, 1500 Lumen/Nits with an illumination period of six (6) hours per night.

"System Sponsorship Agreement" means an agreement in which a sponsor agrees to have its name or brand associated with the System as whole through taking rights to various Sponsorship Opportunities.

"Secondary Sponsorship Agreement" means an agreement in which a sponsor takes rights to discrete Sponsorship Opportunities not covered by a System Sponsorship Agreement.

"Sponsorship Revenue" means the gross revenue a given Sponsor pays to the City and/or Consultant for Sponsorship Opportunities under the relevant Sponsorship agreement.

"Tail Period" means the three-month period beginning on July 1, 2013, the end of the Go Shop Period.

B. System Sponsorship Agreement

- 1) If, during the Go Shop Period or during the Tail Period (in accordance with Section I.B. 3) and 4)), the City closes a System Sponsorship Agreement in which the Sponsor elects to take all Ad Panels as part of its Sponsorship, the parties will apportion 75% of the value of the Sponsorship Revenue to the Sponsorship Opportunities and 25% of the value of such Sponsorship Revenue to the Ad Panels. As to the 75% apportionment of Sponsorship Revenue, Consultant will be paid the following percentages of Sponsorship Revenue as its fee for providing the Services to the City with respect to the System Sponsorship Agreement: 7.5% of the first \$5 million, then 10% of every dollar over \$5 million, provided, however, that if a System Sponsorship Agreement is executed on or before March 14, 2013, Consultant will be entitled to 10% of the full amount (i.e., the 75% apportionment) of Sponsorship Revenue. There will be a \$2.5 million dollar cap on the amount payable to Consultant under the either of immediately foregoing formulae.

As to the 25% apportionment of Sponsorship Revenue, Consultant will be paid 35% of such Sponsorship Revenue as its fee for providing the Services to the City with respect to the System Sponsorship Agreement. Consultant's payment under the 25% apportionment will not be subject to the \$2.5 million cap stated above.

- 2) If, during the Go Shop Period, the City closes a System Sponsorship Agreement in which the Sponsor does not take all the Ad Panels, Consultant will be paid the following percentages of Sponsorship Revenue as its fee for providing the Services to the City with respect to the System Sponsorship Agreement: 7.5% of the first \$5 million, then 10% of every dollar over \$5 million, provided, however, that if a System Sponsorship Agreement is executed on or before March 14, 2013, Consultant will be paid 10% of Sponsorship Revenue. There will be a \$2.5 million dollar cap on the amount payable to Consultant under the immediately foregoing formula. Such cap does not apply to outdoor advertising on Ad Panels that are not sold as part of the System Sponsorship Agreement.
- 3) If, during the Tail Period, the City executes a System Sponsorship Agreement with a Sponsor to which Consultant delivered Marketing Materials (either in hard copy or electronic form) and gave an oral explanation of such materials, either in person or by phone, Consultant will be paid a portion of the Sponsorship Revenue as its fee for providing Services to the City with respect to the System Sponsorship Agreement in the same manner as specified in Paragraphs 1.B. 1) and 2) above.
- 4) Sponsorship Revenue will be paid directly to the City by the Sponsor, provided, however, that the parties will use commercially reasonable efforts to provide in any Sponsorship agreement that Consultant's portion of the Sponsorship Revenue will be paid directly by the Sponsor to Consultant according to the schedule specified in the relevant Sponsorship agreement. If the Sponsorship agreement does not provide for direct payment to Consultant, the City shall pay Consultant its portion promptly, but in no event less than 15 business days after City's receipt of payment by Sponsor. Consultant will be paid its portion of the Sponsorship Revenues on the same schedule that the City is paid its portion of the Sponsorship Revenue, if not paid as a lump sum.
- 5) If the Consultant has earned a fee for a System Sponsorship Agreement (the "Original Fee") and that System Sponsorship Agreement is renewed or extended in any manner (collectively, a "Renewal"), Consultant shall be paid a fee (the "Renewal Fee") based on a percentage of the Sponsorship Revenue generated during the renewal term, except that the applicable percentage rate shall be 50% of the blended percentage rate used to calculate the Consultant's Original Fee. The Renewal Fee shall be paid on the same other terms and conditions as applied to the Original Fee, except that the Renewal Fee may not exceed \$500,000.00 per year ("Annual Cap"). For the purposes of the Annual Cap on the Renewal Fee, the total Sponsorship Revenue to be received in a Renewal term will be divided by the number of years in the Renewal term then multiplied by the 50% of the blended percentage rate used to calculate the Consultant's Original Fee. A separate \$2.5 million cap shall apply to each of the Original Fee and the Renewal Fee so that the \$2.5 million cap applicable to the Original Fee shall not limit payment of the Renewal Fee. Consultant will be paid its portion of the Renewal Fee on the same schedule that the City is paid its portion of the Renewal Sponsorship Revenue, if not paid as a lump sum.
- 6) If during the term of a System Sponsorship Agreement (or any Renewal thereof), the City wishes to expand any Sponsorship Opportunity (e.g., increase the number of Stations from 400 to 800) or add new sponsorship opportunities related to the System that are not listed in Attachment A to Exhibit 1 with the Sponsor (collectively, "Additional Opportunities"), it shall grant the Sponsor the first right to sponsor such Additional Opportunities through the Sponsorship Agreement or otherwise. If the Sponsor pays any Sponsorship Revenue for such Additional Opportunities that were not included in the System Sponsorship

Agreement then in effect, Consultant shall be paid a fee ("Additional Opportunity Fee") with respect to such additional Sponsorship Revenue. If Additional Opportunities include either outdoor advertising (e.g., Ad Panels) that requires updating or replacement/change on an ongoing, periodic basis or other ongoing, periodic tasks of similar or greater effort ("Consultant Work"), Consultant's Additional Opportunity Fee will be the greater of (i) 10% or (ii) the blended percentage rate under the original System Sponsorship Agreement of the additional Sponsorship Revenue generated by the Additional Opportunities. Consultant Work will be reflected in an Amendment to this Agreement. If Additional Opportunities do not include Consultant Work, the Additional Opportunity Fee for Additional Opportunities will be 10% of the additional Sponsorship Revenue generated by the Additional Opportunities. There will be a separate \$2.5 million cap applicable to the fee generated for the Sponsorship Revenue from each of the original System Assets and the Additional Assets.

C. Secondary Sponsorship Agreements

- 1) The parties will determine on a case-by-case basis the percentage due to Consultant for Secondary Sponsorship Agreements resulting from the Services, but in no event less than 10% of the Sponsorship Revenue from any Secondary Sponsorship Agreement.
- 2) Sponsorship Revenue will be paid directly to the City by the Sponsor, provided, however, that the parties will use commercially reasonable efforts to provide in any Secondary Sponsorship Agreement that Consultant's portion of the Sponsorship Revenue will be paid directly by the Sponsor to Consultant according to the schedule specified in the relevant Secondary Sponsorship Agreement. If the Sponsorship agreement does not provide for direct payment to Consultant, the City shall pay Consultant its portion promptly, but in no event less than 15 business days after City's receipt of payment by Sponsor. Consultant will be paid its portion of the Sponsorship Revenue on the same schedule that the City is paid its portion of the Sponsorship Revenue, if not paid as a lump sum.

D. Other Sponsorship Agreements

- 1) Upon request of the City and agreement of Consultant, Consultant may market Sponsorships unrelated to the System subject to final approval of the City of any such Sponsorship agreement ("Other Sponsorships"). The parties agree that the City may on its own solicit and enter into Other Sponsorships for events and assets that are not Sponsorship Opportunities. If the City does so, the Consultant will not be entitled to any percentage of revenues under Other Sponsorships.
- 2) If Consultant and the City agree that the Consultant is engaged on Other Sponsorships, Consultant will be paid a minimum of 10% of the amount of any Sponsorship Revenues under Other Sponsorship agreements.
- 3) Sponsorship Revenue will be paid directly to the City by the Sponsor, provided, however, that the parties will use commercially reasonable efforts to provide in any Sponsorship Agreement that Consultant's portion of the Sponsorship Revenue will be paid directly by the Sponsor to Consultant according to the schedule specified in the relevant Sponsorship agreement. If the Sponsorship agreement does not provide for direct payment to Consultant, the City shall pay Consultant its portion promptly, but in no event less than 15 business days after City's receipt of payment by Sponsor. Consultant will be paid its portion of the Sponsorship Revenues on the same schedule that the City is paid its portion of the Sponsorship Revenues, if not paid as a lump sum.

II. Outdoor Advertising Revenue

A. Definitions

The following terms have the following meanings:

"Ad Panel" means the static (i.e., not electronic) space on Stations for advertising measuring approximately 3 feet by 5 feet installed on the exterior portion of the Station facing away from the bicycle docks. Should the City change the Ad Panels to electronic ad panels, such electronic ad panels will be considered Ad Panels for the purposes of this Agreement.

"Advertising Revenue" means gross advertising revenue actually received by Consultant from the sale of advertising on the Ad Panels.

"Contract Quarter" means the three (3) month periods during the Term ending on the last day of March, June, September and December.

"Contract Period" means the period in which Consultant performs the Services related to outdoor advertising under the Agreement. The first Contract Period under this Agreement shall be from the Effective Date to December 31, 2013. The succeeding Contract Periods will be calendar years beginning on January 1, 2014.

"Guaranteed Payment" means an annual fee of \$500,000.00. The Guaranteed Payment shall be paid in monthly installments. The Guaranteed Payment is based on 400 Stations with Ad Panels. Monthly payment will be based on the number of Stations installed by Alta at the end of a month and prorated based on 400 Stations. If there are fewer than 400 Stations with Ad Panels installed at the end of a month, the Guaranteed Revenue will be proportionately reduced.

"Net Advertising Revenues" means the Advertising Revenue, less any agency commissions to agencies unaffiliated with the Consultant, not to exceed 16 2/3% on any given sale of Ad Panels.

B. Collection of Advertising Revenue and Payments

1) Guaranteed Payment. In connection with the sale of outdoor advertising on the Ad Panels, the Consultant shall pay to the City during each year during the Term a payment in an amount equal to the greater of (i) the Guaranteed Payment (as prorated according to the terms of this Agreement) or (ii) sixty percent (60%) of Net Advertising Revenue ("Percentage Payment").

2) Monthly Installments of Guaranteed Payment. Consultant shall pay the City the Guaranteed Payment in equal monthly installments on or before the first day of each calendar month during the Term.

3) Quarterly Statements and Reconciliation. Within thirty (30) days of the end of each Contract Quarter during the Term and after the termination of the Agreement, Consultant shall provide the City with a statement showing the Net Advertising Revenues that the Consultant collected during such quarter (or other period) and from the beginning of the Contract Period until the end of such quarter (or other period), the calculation of Net Advertising Revenue for such quarter and from the beginning of the Contract Period to the end of such quarter (or other period), and the Percentage Payment, if any, payable for such quarter (or other period) and from the beginning of such Contract Period to the end of such quarter (or other period) ("Quarterly Statement"). If the Percentage Payment

due from the beginning of such Contract Period to the end of such quarter or other period exceeds the aggregate of monthly installments of the Guaranteed Payment and Percentage Payments paid from the beginning of such Contract Period to the end of such Contract Quarter or other period, Consultant shall pay the City such excess amount together with delivery of the statement.

4) End of Year Statements and Reconciliation. The Consultant shall include in the Quarterly Statement for the last Contract Quarter of each Contract Period (and if the Contract terminates before the scheduled expiration date, the Consultant shall include in the Quarterly Statement for such last period), the total Net Advertising Revenue collected by the Consultant for the entire Contract Period (or other period) and any adjustments that may be made between the City and the Consultant so that the total Percentage Payment paid for each such Contract Period (or other period) shall be a sum equal to sixty percent (60%) of the total Net Advertising Revenue collected during such Contract Period during the Term, less the aggregate monthly installment of the Guaranteed Payment and the aggregate amount of Percentage Payments paid for such Contract Period, so that the Percentage Payment although payable quarterly, shall be computed and adjusted on an annual basis. If the Consultant has paid more than the Guaranteed Payment required during the preceding Contract Period (or other period), the excess paid by the Consultant for that Contract Period (or other period) shall be credited against the Guaranteed Payments due for each of the following months during the following Contract Period(s) and, if necessary, against the Percentage Payments due during the following Contract Period(s), until the entire credit has been applied, except that following termination of the Agreement, the City shall pay the Consultant any excess Guaranteed Payment (or relevant portion thereof) within sixty (60) days following receipt of the final Quarterly Statement. Any Net Advertising Revenue received after the expiration of the Term or termination of this Agreement shall be accounted for when received by the Consultant consistent with the terms of this Section B. 4) as if such amount had been received immediately prior to the expiration of the Term or termination of this Agreement, as applicable.

5) If more than twenty-five percent (25%) of the Ad Panels are not illuminated or if the quality of the illumination at more than twenty-five percent (25%) of the Ad Panels is less than the Illumination Standards, Consultant must notify the City Project Manager in writing. If such condition is not remedied within 10 calendar days, then the amount of the Guaranteed Payment shall be reduced by twenty-five percent (25%) for the period of time that such deficient illumination service continues to remain in effect beginning on the receipt of written notice by the City.

6) If more than five percent (5%) of the Ad Panels are obstructed, Consultant must notify the City Project Manager in writing. If such condition is not remedied within five (5) business days, then the Guaranteed Payment shall be reduced proportionately (by the same percentage) for the period of time that such obstruction continues to remain in effect beginning on the receipt of written notice by the City.

C. Consultant Fee

In consideration for providing Services relating to the marketing and sale of ads on Ad Panels, Consultant shall retain forty percent (40%) of all Net Advertising Revenues collected as its fee (the "Consultant Fee").

D. Billing and Collection of Advertising Revenues

Consultant shall be responsible for billing, and collecting from, all advertisers all amounts payable for advertising on the Ad Panels. Advertisers will pay all amounts invoiced to Consultant.

E. Records and Audit

Consultant shall keep full, complete and proper books, records and accounts of Advertising Revenues. The City and its employees and agents shall have the right at any time, during regular business hours, upon at least five (5) business days written notice to Consultant, to examine and inspect the books and records of Consultant that relate directly to, and solely for the purpose of, investigating and verifying the accuracy of any statement of Advertising Revenues. The City may once in any calendar year cause an audit of the Services provided by Consultant to the City under this Agreement for the time period covering up to the previous three (3) years to be made by an accountant of the City's selection, and if as a result of any such audit it is determined that there has been a deficiency in the payment of an Guaranteed Payment, then such deficiency shall become immediately due and payable with interest at the rate of ten percent (10%) per annum from the date said payment or payments should have been made. Consultant shall keep all said records for 5 years after termination or expiration of this Agreement.

EXHIBIT 3
SPECIAL CONDITIONS REGARDING MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE
(MBE/WBE) COMMITMENT AND SCHEDULES

Special Conditions Regarding Minority and Women Owned Business Enterprise (MBE/WBE)
Commitment and Schedules

I. POLICY AND TERMS

It is the policy of the City of Chicago that Local Businesses certified as Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in accordance with Section 2-92-420 et seq. of the Municipal Code of Chicago and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, as well as MBEs and WBEs certified by Cook County, Illinois, shall have full and fair opportunities to participate fully in the performance of this agreement. Therefore, the contractor shall not discriminate against any person or business on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income, and shall take affirmative action to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Pursuant to Section 2-92-430 of the Municipal Code of Chicago, the Chief Procurement Officer has established a goal of awarding not less than 25% of the annual dollar value of all non-construction contracts to certified MBEs and 5% of the annual dollar value of all non-construction contracts to certified WBEs.

Accordingly, the Contractor commits to make Good Faith Efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

MBE Contract Goal: 25%
WBE Contract Goal: 5%

The commitment is met by the contractor's status as an MBE or WBE, or by a joint venture with one or more certified MBEs or WBEs that will perform work on the project, or by subcontracting a portion of the work to one or more MBEs or WBEs, or by the purchase of materials used in the performance of the contract from one or more MBEs or WBEs, or by the indirect participation of MBEs or WBEs in other aspects of the contractor's business (but no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all government contracts of such contractor), or by any combination of the foregoing.

Note: MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE, but not both to demonstrate compliance with the contract goals.

As noted above, the contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this contract. However, in determining the manner of MBE/WBE participation, the contractor shall first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to the performance of this contract. In appropriate cases, the Chief Procurement Officer will require the contractor to demonstrate the specific efforts undertaken to involve MBEs and WBEs in direct participation in the performance of this contract.

The contractor also may with prior approval of the Chief Procurement Officer or designee, meet all, or part, of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in private sector projects.

II. **DEFINITIONS**

- a. "Area of Specialty" means the description of a MBEs or WBE firm's business which has been determined by the Chief Procurement Officer to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory (defined below). Credit towards this Contract's MBE and WBE participation goals shall be limited to the participation of firms performing within their Area of Specialty.

NOTICE: The City of Chicago does not make any representation concerning the ability of any MBE/WBE to perform work within their Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of MBEs/WBEs to satisfactorily perform the work proposed.

- b. "B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.
- c. "Bid" means a bid, proposal, or submittal detailing a description of the services or work to be provided by the contractor in response to a bid solicitation, request for proposal, request for qualification of task order request (issued in accordance with the Master Consulting Agreement) that issued by the City.
- d. "Bidder" means any person or business entity that submits a bid, proposal, qualification or submittal that seeks to enter into a contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.
- e. "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.
- f. "Chief Procurement Officer" or "CPO" means the Chief Procurement Officer of the City of Chicago or his or her designee.
- g. "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.
- h. "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.
- i. "Contractor" means any person or business entity that has entered into a contract with the City as described herein, and includes all partners, affiliates, and joint ventures of such person or entity.
- j. "Direct Participation" the total value of payments made to MBE or WBE firms for work that is completed in their Area of Specialty directly related to the performance of the subject matter

of the Contract will count as Direct Participation toward the Contract Specific Goals.

- k. "Directory" means the Directory of Certified "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the City of Chicago. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE, and WBE firms.
- l. "Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that the CPO or his or her designee has determined, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.
- m. "Indirect Participation" refers to the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty related to other aspects of the Contractor's business. (Note: no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all government contracts held by that contractor.)
- n. "Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- o. "Minority Business Enterprise" or "MBE" means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a minority owned and controlled business by Cook County, Illinois.
- p. "Municipal Code of Chicago" or "MCC" means the Municipal Code of the City of Chicago.
- q. "Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase, and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
- r. "Women Business Enterprise" or "WBE" means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a women owned business by Cook County, Illinois.

III. Joint Ventures

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet the contract's MBE/WBE participation goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and

non-certified firms as long as one member is an MBE or WBE.

- A. The joint venture may be eligible for credit towards the contract's MBE/WBE participation goals only if:
1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
 2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
 3. Each joint venture partner executes the bid to the City; and
 4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

- B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the contract's MBE/WBE participation goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the contract's MBE/WBE participation goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the contract's MBE/WBE participation goals.

- C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its proposal a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint

venture partner; and

4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

Notice: Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

Notice: The City requires that, whenever a joint venture is proposed as the prime Contractor, each joint venture partner must separately sign the proposal to the City, in the pages captioned TO BE EXECUTED BY A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR, as applicable.

IV. COUNTING MBE/WBE PARTICIPATION TOWARD THE CONTRACT GOALS

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals. For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. **Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.
 1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
 2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.
- C. If the MBE or WBE performs the work itself:
 1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies and materials purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces (except supplies and equipment the MBE or WBE subcontractor purchases or leases from the prime

contractor or its affiliate). **0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals**

- D. If the MBE or WBE is a manufacturer:
 - 1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
 - 1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
 - 1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
 - 2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
 - 1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals; or
 - 2. If employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
 - 3. A joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.
- H. If the MBE or WBE subcontracts out any of its work:
 - 1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
 - 2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except as allowed by C.1. above).
 - 3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

V. REGULATIONS GOVERNING REDUCTIONS TO OR WAIVER OF MBE/WBE GOALS

The following Regulations set forth the standards to be used in determining whether or not a reduction or waivers of the MBE/WBE commitment goals of a particular contract are appropriate.

If a bidder determines that it is unable to meet the MBE and/or WBE goal percentage on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for grant of relief from the MBE/WBE percentages submitted on the bidder's letterhead, and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Minority and Women Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

All bidders will be considered responsive to the terms and conditions of these Regulations if, at the time of bid, it submits a waiver request and all supporting documentation that adequately addresses the conditions for waiver of MBE/WBE goals, including proof of notification to assist agencies except:

1) Bidders responding to Request for Proposals (RFPs) who have been identified as a sort listed candidate and/or a prospective awardee will be given a designated time allowance, but no more than fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein; and

2) Bidders responding to Request for Information and or Qualifications (RFI/RFQs) deemed by the Chief Procurement Officer or authorized designee to be the most responsive and responsible shall submit documentation that adequately addresses the conditions for waiver described herein during negotiations.

Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his or her discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder; or re-advertising the bid/proposal. All bidders must submit all required documents at the time of bid opening to expedite the contract award.

A. Direct/Indirect Participation

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate.

1. The bidder has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct or indirect work identified or related to the advertised bid/proposal.. Documentation must include but is not necessarily limited to:
 - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
 - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
 - i. Name, address, email and telephone number of MBE/WBE firms solicited;
 - ii. Date and time of contact;
 - iii. Person contacted;
 - iv. Method of contact (letter, telephone call, facsimile, email, etc.).
 - c. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:

- i. Project identification and location;
- ii. Classification/commodity of work items for which quotations were sought;
- iii. Date, item, and location for acceptance of subcontractor bids;
- iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why negotiations were not successful;
- v. Affirmation that Good Faith Efforts have been demonstrated by: choosing subcontracting opportunities likely to achieve MBE/WBE goals; not imposing any limiting conditions which were not mandatory for all subcontractors; providing notice of subcontracting opportunities to M/WBE firms and assist agencies at least five (5) business days in advance of the initial bid due date.

OR

2. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder must provide the following information:
 - a. A detailed statement of the work identified for MBE/WBE participation for which the bidder asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
 - b. A listing of all potential subcontractors contacted for a quotation on that work item;
 - c. Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
3. Other documentation that demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
 - a. The City's estimate for the work under a specific subcontract;
 - b. The bidder's own estimate for the work under the subcontract;
 - c. An average of the bona fide prices quoted for the subcontract;
 - d. Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

B. Assist Agency Participation

Every waiver and/or reduction request must include evidence that the bidder/contractor has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community shown in Attachment A. This notice must be given at least five (5) business days in advance of the initial bid due date.

The notice requirement of this Section will be satisfied if a bidder contacts at least one of the associations on Attachment A when the prime contractor seeks a waiver or reduction in the utilization goals. Attachment B provides the letter format that a prime contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required for any bid/proposal submitted to be deemed responsive on the date of bid opening. If deemed appropriate, the Contract Compliance Officer may contact the assist agency for verification of notification.

C. Impracticability

1. If the Chief Procurement Officer determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding

prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.

2. The requirements set forth in these Regulations shall not apply where the Chief Procurement Officer determines prior to the bid solicitations that MBE/WBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices, or standards not previously known by the Chief Procurement Officer, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

VI. PROCEDURE TO DETERMINE BID COMPLIANCE

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its Good Faith Efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract: 1) An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals; and/or 2) a request for reduction or waiver of the Contract Specific Goals in accordance with Section 2-92-450 of the MCC.

Only compliance plans utilizing MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements will be counted toward the Contract Specific Goals.

The following Schedules and described documents constitute the bidder's MBE/WBE proposal, and must be submitted in accordance with the guidelines stated:

A. Schedule C-1: Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier, and/or Consultant

The bidder must submit the appropriate Schedule C-1 with the bid for each MBE and WBE included on the Schedule D-1. Suppliers must submit the Schedule C-1 for Suppliers, first tier subcontractors must submit a Schedule C-1 for Subcontractors to the Prime Contractor, and second or lower tier subcontractors must submit a Schedule C-1 for second tier Subcontractors. The City encourages subcontractors to utilize the electronic fillable format Schedule C-1, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Each Schedule C-1 must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C-1 must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D-1 within five (5) business days after the date of the bid opening.

Failure to submit a completed Schedule C-1 in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

B. Letters of Certification.

A copy of each proposed MBE/WBE firm's current Letter of Certification from the City of Chicago or Cook County, Illinois, must be submitted with the bid/proposal. All Letters of Certification issued by the City of Chicago and Cook County include a statement of the MBE/WBE firm's Area of Specialty. The MBE/WBE firm's scope of work, as detailed by their Schedule C-1, must conform to their stated Area of Specialty.

C. Joint Venture Agreements.

If the bidder's MBE/WBE proposal includes the participation of an MBE/WBE as joint venture on any tier (either as the bidder/contractor or as a subcontractor), the bidder must provide a copy of the joint venture agreement and a Schedule B along with all other requirements listed in Section III above. In order to demonstrate the MBE/WBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the MBE/WBE; and (3) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

D. Schedule D-1: Affidavit of MBE/WBE Goal Implementation Plan

Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm. The City encourages bidders to utilize the electronic fillable format Schedule D-1, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section V herein, the bidder must commit to the expenditure of a specific dollar amount of participation by each MBE/WBE firm included on their Schedule D-1. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as percentages of their total base bids or in the case of Term Agreements, depends upon requirements agreements and blanket agreements, as percentages of the total estimated usage. All commitments made by the bidder's Schedule D-1 must conform to those presented in the submitted Schedule C-1. If Schedule C-1 is submitted after the opening, the bidder may submit a revised Schedule D-1 (executed and notarized to conform with the Schedules C-1). Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

All commitments for joint venture agreements must be delineated in the Schedule B.

VII. REPORTING REQUIREMENTS DURING THE TERM OF THE CONTRACT

- A. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements will be made available to the Chief Procurement Officer upon request.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and or fax audit notifications will be sent out to the contractor with instructions to report

payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.

- C. Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.
- D. All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <https://chicago.mwdbe.com>

- E. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- F. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

VIII. CHANGES TO COMPLIANCE PLAN

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Contract Compliance Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
 - 1. Unavailability after receipt of reasonable notice to proceed;
 - 2. Failure of performance;
 - 3. Financial incapacity;
 - 4. Refusal by the subcontractor to honor the bid or proposal price or scope;
 - 5. Mistake of fact or law about the elements of the scope of work of a solicitation where a

- reasonable price cannot be agreed;
 - 6. Failure of the subcontractor to meet insurance, licensing, or bonding requirements;
 - 7. The subcontractor's withdrawal of its bid or proposal;
 - 8. Subcontractor provided false information; or
 - 9. De-certification the subcontractor as a MBE or WBE (graduation from the MBE/WBE program does not constitute de-certification).
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:
- 1. The bidder or contractor must notify the Contract Compliance Officer and Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
 - 2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the written request.
 - 3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make Good Faith Efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of Good Faith Efforts, must meet the requirements in section V. If the MBE or WBE Contract Specific Goal cannot be reached and Good Faith Efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
 - 4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make Good Faith Efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
 - 5. A new subcontract must be executed and submitted to the Contract Compliance Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

IX. NON-COMPLIANCE AND DAMAGES

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts to comply with MBE or WBE participation requirements; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-445, remedies or sanctions may include a penalty in the amount of the discrepancy between the amount of the MBE/WBE participation commitment and the achieved amount of MBE/WBE participation, disqualification from contracting or subcontracting on additional City contracts for up to three years. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the determination of non-compliance and the

imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-445 of the Municipal Code of the City of Chicago, within 15 business days of the determination.

X. Arbitration

- A. In the event a contractor has not complied with the contractual MBE/WBE percentages in its Schedule D, underutilization of MBEs/WBEs shall entitle the affected MBE/WBE to recover from the contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by the City. The Ordinance and contracts subject thereto provide that any disputes between the contractor and such affected MBEs/WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE in accordance with these regulations. This provision is intended for the benefit of any MBE/WBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE/WBE.
- B. An MBE/WBE desiring to arbitrate shall contact the contractor in writing to initiate the arbitative process. Except as otherwise agreed to in writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) calendar days of the contractor receiving notification of the intent to arbitrate from the MBE/WBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the MBE/WBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.
- C. All arbitration fees are to be paid *pro rata* by the parties, however, that the arbitrator is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing MBE/WBE.
- D. The MBE/WBE must send the City a copy of the Demand for Arbitration within ten (10) calendar days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (10) calendar days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

XI. Equal Employment Opportunity

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

XII. Information Sources

Small business guaranteed loans; surety bond guarantees; 8 (a) certification:

U.S. Small Business Administration
500 W. Madison Street, Suite 1250
Chicago, Illinois 60661
General Information
(312) 353-4528

S.B.A. - Procurement Assistance
500 West Madison, Suite 1250

S.B.A. - Bond Guarantee Program
Surety Bonds
500 West Madison, Suite 1250
Chicago, Illinois 60661
Attention: Carole Harris
(312) 353-4003

Chicago, Illinois 60661
Attention: Robert P. Murphy, Area Regional Administrator
(312) 353-7381

Directory of Certified Disadvantaged, Minority and Women Business Enterprises:
Project information and general MBE/WBE information:

City of Chicago
Department of Procurement
Contract Administration Division
City Hall - Room 403
Chicago, Illinois 60602
Attention: Monica Jimenez
(312) 744-0845

Information on MBE/WBE availability in the manufacturing, sales or supplies, and related fields
(direct assistance from 42 regional affiliates located throughout the U.S.):

**National Minority Suppliers
Development Council, Inc.**
1040 Avenue of the Americas, 2nd floor
New York, New York 10018
Attention: Harriet R. Michel
(212) 944-2430

**Chicago Minority Business
Development Council**
1 East Wacker Drive
Suite 1200
Chicago, Illinois 60601
Attention: Executive Director
Phone #: (312) 755-8880
Fax #: (312) 755-8890

ATTACHMENT A – ASSIST AGENCY

Alliance of Business Leaders & Entrepreneurs (ABLE)

150 N. Michigan Ave. Suite 2800
Chicago, IL 60601
Phone: (312) 624-7733
Fax: (312) 624-7734
Web: www.ablechicago.com

Alliance of Minority and Female Contractors

c/o Federation of Women Contractors
5650 S. Archer Avenue
Chicago, IL 60638
Phone: (312) 360-1122
Fax: (312) 360-0239

American Brotherhood of Contractors Business Development Center

11509 S. Elizabeth
Chicago, IL 60643
Phone: (773) 928-2225
Fax: (773) 928-2209
Web: www.american-brotherhood.org

Asian American Institute

4753 N. Broadway St. Suite 904
Chicago, IL 60640
Phone: (773) 271-0899
Fax: (773) 271-1982
Web: www.aaichicago.org

Association of Asian Construction Enterprises

333 N. Ogden Avenue
Chicago, IL 60607
Phone: (847) 525-9693
Email: nakmancorp@aol.com

Black Contractors United

400 W. 76th Street, Suite 200
Chicago, IL 60620
Phone: (773) 483-4000
Fax: (773) 483-4150
Web: www.blackcontractorsunited.com

Chatham Business Association Small Business Development, Inc.

8441 S. Cottage Grove Avenue
Chicago, IL 60619
Phone: (773) 994-5006
Fax: (773) 994-9871
Web: www.cbaworks.org

Chicago Area Gay & Lesbian Chamber of Commerce

3656 N. Halsted
Chicago, IL 60613
Phone: (773) 303-0167
Fax: (773) 303-0168
Web: www.glchamber.org

Chicago Minority Supplier Development Council, Inc.

105 W. Adams, Suite 2300
Chicago, IL 60603-6233
Phone: (312) 755-8880
Fax: (312) 755-8890
Web: www.chicagomsdc.org

Chicago Urban League

4510 S. Michigan Ave.
Chicago, IL 60653
Phone: (773) 285-5800
Fax: (773) 285-7772
Web: www.cul-chicago.org

Cosmopolitan Chamber of Commerce

203 N. Wabash, Suite 518
Chicago, IL 60601
Phone: (312) 499-0611
Fax: (312) 332-2688
Web: www.cosmochamber.org

Federation of Women Contractors

5650 S. Archer Avenue
Chicago, IL 60638
Phone: (312) 360-1122
Fax: (312) 360-0239
Web: www.fwcchicago.com

Hispanic American Construction Industry Association (HACIA)

901 West Jackson Boulevard, Suite 205
Chicago, IL 60607
Phone: (312) 666-5910
Fax: (312) 666-5692
Web: www.haciaworks.org

Illinois Hispanic Chamber of Commerce

855 W. Adams, Suite 100
Chicago, IL 60607
Phone: (312) 425-9500
Fax: (312) 425-9510
Web: www.ihccbbusiness.net

Latin American Chamber of Commerce

3512 West Fullerton Avenue
Chicago, IL 60647
Phone: (773) 252-5211
Fax: (773) 252-7065
Web: www.latinamericanchamberofcommerce.com

National Association of Women Business Owners

Chicago Chapter
230 E. Ohio, Suite 400
Chicago, IL 60611
Phone: (312) 224-2605
Fax: (312) 6448557
Web: www.nawbochicago.org

Rainbow/PUSH Coalition

International Trade Bureau
930 E. 50th Street
Chicago, IL 60615
Phone: (773) 256-2781
Fax: (773) 373-4104
Web: www.rainbowpush.org

Suburban Minority Contractors Association

1250 Grove Ave. Suite 200
Barrington, IL 60010
Phone: (847) 852-5010
Fax: (847) 382-1787
Web: www.suburbanblackcontractors.org

Uptown Center Hull House

4520 N. Beacon Street
Chicago, IL 60640
Phone: (773) 561-3500
Fax: (773) 561-3507
Web: www.hullhouse.org

Women Construction Owners & Executives (WCOE)

Chicago Caucus
308 Circle Avenue
Forest Park, IL 60130
Phone: (708) 366-1250
Fax: (708) 366-5418
Web: www.wcoeusa.org

Women's Business Development Center

8 South Michigan Ave., Suite 400
Chicago, IL 60603
Phone: (312) 853-3477
Fax: (312) 853-0145
Web: www.wbdc.org

Chicago Women in Trades (CWIT)

4425 S. Western Blvd.
Chicago, IL 60609-3032
Phone: (773) 376-1450
Fax: (312) 942-0802
Web: www.chicagowomenintrades.org

Coalition for United Community Labor Force

1253 W. 63rd Street
Chicago, IL 60636
Phone: (312) 243-5149

Illinois Black Chamber of Commerce

331 Fulton Street, Suite 530
Peoria, IL 61602
Phone: (309) 740-4430
Fax: (309) 672-1379
www.ilbcc.org

Englewood Black Chamber of Commerce

P.O. Box 21453
Chicago, IL 60621

South Shore Chamber, Incorporated

Black United Funds Bldg.
1750 E. 71st Street
Chicago, IL 60649-2000
Phone: (773) 955- 9508

United Neighborhood Organization (UNO)

954 W. Washington Blvd., 3rd Floor
Chicago, IL 60607
Phone: (312) 432-6301
Fax: (312) 432-0077
Web: www.uno-online.org

National Organization of Minority Engineers

33 West Monroe Suite 1540
Chicago, Illinois 60603
Phone: (312) 425-9560
Fax: (312) 425-9564
Web: www.nomeonline.org

(January 2012)

ATTACHMENT B

(On Bidder/proposer's Letterhead)

RETURN RECEIPT REQUESTED

(Date)

Re: Specification _____

Description: _____

(Assist Agency Name and Address)

Dear _____:

(Bidder/Proposer) intends to submit a bid/proposal in response to the above referenced specification with the City of Chicago. Bids are due _____ advertised specification with the City of Chicago.

The following areas have been identified for subcontracting opportunities on both a direct and indirect basis:

Our efforts to identify potential subcontractors have not been successful in order to meet the Disadvantaged/Minority/Women Business Enterprise contract goal. **Due to the inability to identify an appropriate DBE/MBE/WBE firm certified by the City of Chicago to participate as a subcontractor or joint venture partner, a request for the waiver of the contract goals will be submitted.** If you are aware of such a firm, please contact

Name of Company Representative Address/phone at _____

within (10) ten working days of receipt of this letter.

Under the City of Chicago's MBE/WBE/DBE Ordinance, your agency is entitled to comment upon this waiver request to the City of Chicago. Written comments may be directed within fifteen (15) working days of your receipt of this letter to:

Monica Jimenez, Deputy Procurement Officer
Department of Procurement Services
City of Chicago
121 North La Salle Street, Room 403
Chicago, Illinois 60602

If you wish to discuss this matter, please contact the undersigned at _____.

Sincerely,

SCHEDULE B: Affidavit of Joint Venture (MBE/WBE)

This form need not be submitted if all joint venturers are MBEs and/or WBEs. In such a case, however, a written joint venture agreement among the MBE and WBE venturers must be submitted. In all proposed joint ventures, each MBE and/or WBE venturer must submit a copy of their current Letter of Certification.

All Information Requested by this Schedule must Be Answered in the Spaces Provided. Do Not Refer to Your Joint Venture Agreement Except to Expand on Answers Provided on this Form. If Additional Space Is Required, Additional Sheets May Be Attached.

I. Name of joint venture: _____
Address of joint venture: _____
Phone number of joint venture: _____

II. Identify each non-MBE/WBE venturer(s):
Name of Firm: _____
Address: _____
Phone: _____
Contact person for matters concerning MBE/WBE compliance: _____

III. Identify each MBE/WBE venturer(s):
Name of Firm: _____
Address: _____
Phone: _____
Contact person for matters concerning MBE/WBE compliance: _____

IV. Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture: _____

V. Attach a copy of the joint venture agreement. In order to demonstrate the MBE and/or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the MBE/WBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.

A. What are the percentage(s) of MBE/WBE ownership of the joint venture?

MBE/WBE ownership percentage(s) _____

Non-MBE/WBE ownership percentage(s) _____

B. Specify MBE/WBE percentages for each of the following (provide narrative descriptions and other detail as applicable):

1. Profit and loss sharing: _____

2. Capital contributions:
(a) Dollar amounts of initial contribution: _____

(b) Dollar amounts of anticipated on-going contributions: _____

3. Contributions of equipment (Specify types, quality and quantities of equipment to be provided by each venturer): _____

4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control: _____

5. Provide copies of all written agreements between venturers concerning this project.

6. Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:

VII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements.):

A. Joint venture check signing:

B. Authority to enter contracts on behalf of the joint venture:

C. Signing, co-signing and/or collateralizing loans:

D. Acquisition of lines of credit:

E. Acquisition and indemnification of payment and performance bonds:

F. Negotiating and signing labor agreements:

G. Management of contract performance. (Identify by name and firm only):

1. Supervision of field operations: _____

2. Major purchases: _____

3. Estimating: _____

4. Engineering: _____

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

B. Identify the managing partner, if any, and describe the means and measure of their compensation:

C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

IX. State the approximate number of operative personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-MBE/WBE firm, the MBE/WBE firm, or the joint venture.

permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If, after filing this Schedule B and before the completion on the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

Name of MBE/WBE Partner Firm Name of Non-MBE/WBE Partner Firm

Signature of Affiant Signature of Affiant

Name and Title of Affiant Name and Title of Affiant

Date Date

On this . day of _____ , 20 ____ , the above-signed officers

(names of affiants)

personally appeared and, known to me be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Signature of Notary Public

My Commission Expires: _____

(SEAL)



**FOR
NON-CONSTRUCTION
PROJECTS ONLY**

SCHEDULE C-1

MBE/WBE Letter of Intent to Perform as a Subcontractor, Supplier, or Consultant

Project Name: _____ Specification No.: _____

From: _____
(Name of MBE/WBE Firm)

To: _____ and the City
of Chicago.
(Name of Prime Contractor)

The MBE or WBE status of the undersigned is confirmed by the attached City of Chicago Certification Letter. 100% MBE or WBE participation is credited for the use of a MBE or WBE "manufacturer." 60% participation is credited for the use of a MBE or WBE "regular dealer."

The undersigned is prepared to perform the following services in connection with the above named project/contract. If more space is required to fully describe the MBE or WBE proposed scope of work and/or payment schedule, including a description of the commercially useful function being performed. Attach additional sheets as necessary:

The above described performance is offered for the following price and described terms of payment:

SUB-SUBCONTRACTING LEVELS

A zero (0) must be shown in each blank if the MBE or WBE will not be subcontracting any of the work listed or attached to this schedule.

_____ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to non
MBE/WBE contractors.

_____ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to MBE or
WBE contractors.

NOTICE: If any of the MBE or WBE scope of work will be subcontracted, list the name of the vendor and attach a brief explanation, description and pay item number of the work that will be subcontracted. MBE/WBE credit will not be given for work subcontracted to Non-MBE/WBE contractors, except for as allowed in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment.

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, within three (3) business days of your receipt of a signed contract from the City of Chicago.

NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.

(Signature of President/Owner/CEO or Authorized Agent of MBE/WBE)

(Date)

(Name/Title-Please Print)

(Email & Phone Number)



SCHEDULE D-1
Compliance Plan Regarding MBE/WBE Utilization
Affidavit of Prime Contractor

**FOR
NON-CONSTRUCTION
PROJECTS ONLY**

**MUST BE SUBMITTED WITH THE BID. FAILURE TO SUBMIT THE SCHEDULE D-1 WILL
CAUSE THE BID TO BE REJECTED. DUPLICATE AS NEEDED.**

Project Name: _____

Specification No.: _____

In connection with the above captioned contract, I HEREBY DECLARE AND AFFIRM that I am a duly
authorized representative of _____
(Name of Prime Consultant/Contractor)

and that I have personally reviewed the material and facts set forth herein describing our proposed
plan to achieve the MBE/WBE goals of this contract.

All MBE/WBE firms included in this plan have been certified as such by the City of Chicago
(Letters of Certification Attached).

I. Direct Participation of MBE/WBE Firms:

NOTE: The bidder/proposer shall, in determining the manner of MBE/WBE participation, first
consider involvement with MBE/WBE firms as joint venture partners, subcontractors, and suppliers of
goods and services directly related to the performance of this contract.

A. If bidder/proposer is a joint venture and one or more joint venture partners are certified MBEs
or WBEs, attach copies of Letters of Certification, Schedule B form and a copy of Joint Venture
Agreement clearly describing the role of each MBE/WBE firm(s) and its ownership interest in the
joint venture.

B. Complete this section for each MBE/WBE Subcontractor/Supplier/Consultant participating on this
contract:

1. Name of MBE/WBE: _____

Address: _____

Contact Person: _____

Phone Number: _____

Dollar Value of Participation; \$ _____

Percentage of Participation % _____

2. Name of MBE/WBE: _____

Address: _____

Contact Person: _____

Phone Number: _____

Dollar Value of Participation; \$ _____

Percentage of Participation % _____

3. Name of MBE/WBE: _____

Address: _____

Contact Person: _____

Phone Number: _____

Dollar Value of Participation; \$ _____

Percentage of Participation % _____

4. Name of MBE/WBE: _____

Address: _____

Contact Person: _____

Phone Number: _____

Dollar Value of Participation; \$ _____

Percentage of Participation % _____

5. Attach Additional Sheets as Needed

II. Indirect Participation of MBE/WBE Firms

NOTE: This section need not be completed if the MBE/WBE goals have been met through the direct participation outlined in Section I. If the MBE/WBE goals have not been met through direct participation, Contractor will be expected to demonstrate that the proposed MBE/WBE direct participation represents the maximum achievable under the circumstances. Only after such a demonstration will indirect participation be considered.

MBE/WBE Subcontractors/Suppliers/Consultants proposed to perform work or supply goods or services where such performance does not directly relate to the performance of this contract:

1. Name of MBE/WBE: _____

Address: _____

Contact Person: _____

Phone Number: _____

Dollar Value of Participation; \$ _____

Percentage of Participation % _____

2. Name of MBE/WBE: _____

Address: _____

Contact Person: _____

Phone Number: _____

Dollar Value of Participation; \$ _____

Percentage of Participation % _____

3. Name of MBE/WBE: _____

Address: _____

Contact Person: _____

Phone Number: _____

Dollar Value of Participation; \$ _____

Percentage of Participation % _____

4. Name of MBE/WBE: _____

Address: _____

Contact Person: _____

Phone Number: _____

Dollar Value of Participation; \$ _____

Percentage of Participation % _____

5. Attach Additional Sheets as Needed

III. Summary of MBE/WBE Proposal

A. MBE Proposal (Direct & Indirect)

1. MBE Direct Participation

MBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
Total Direct MBE Participation		

2. MBE Indirect Participation

MBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
Total Indirect MBE Participation		

B. WBE Proposal (Direct & Indirect)

1. WBE Direct Participation

WBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
Total Direct WBE Participation		

2. WBE Indirect Participation

WBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
Total Indirect WBE Participation		

The Prime Contractor designates the following person as its MBE/WBE Liaison Officer:

(Name- Please Print or Type)

(Phone)

I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, THAT NO MATERIAL FACTS HAVE BEEN OMITTED, AND THAT I AM AUTHORIZED ON BEHALF OF THE PRIME CONTRACTOR TO MAKE THIS AFFIDAVIT.

(Name of Prime Contractor – Print or Type)

State

of: _____

County

of: _____

(Signature)

(Name/Title of Affiant – Print or Type)

(Date)

On this ____ day of _____, 20____, the above signed officer

(Name of Affiant)

personally appeared and, known by me to be the person described in the foregoing Affidavit, acknowledged that (s)he executed the same in the capacity stated therein and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

(Notary Public Signature)

SEAL:

Commission Expires: _____



DEPARTMENT OF PROCUREMENT SERVICES

MAR 15 2013

CITY OF CHICAGO

Iliana Pappas
Accent Marketing, Inc.
2659 N Wayne St., Unit D
Chicago, IL 60614

Annual Certificate Expires: March 1, 2014

Dear Ms. Pappas:

We are pleased to inform you that Accent Marketing, Inc. has been re-certified as a Minority and Woman Business Enterprise (MBE/WBE) by the City of Chicago. This MBE/WBE certification is valid until March 1, 2018; however your firms' certification must be re-validated annually.

As a condition of continued certification during this five year period, you must file an annual No-Change Affidavit. Your firm's **No Change Affidavit is due by March 1, 2014**. Please remember, you have an affirmative duty to file your No-Change Affidavit 60 days prior to the date of expiration. Therefore, you must file your **No-Change Affidavit by January 1, 2014**.

It is important to note that you also have an ongoing affirmative duty to notify the City of Chicago of any changes in ownership or control of your firm, or any other fact affecting your firm's eligibility for certification within **10 days** of such change. These changes may include but are not limited to a change of address, change of business structure, change in ownership or ownership structure, change of business operations, and/or gross receipts that exceed the program threshold.

Please note – you shall be deemed to have had your certification lapse and will be ineligible to participate as a Minority and Woman Business Enterprise (MBE/WBE) if you fail to:

- ♦ file your No Change Affidavit within the required time period;
- ♦ provide financial or other records requested pursuant to an audit within the required time period; or
- ♦ notify the City of any changes affecting your firm's certification within 10 days of such change.

MAR 15 2013

Further, if you or your firm is found to be involved in certification, bidding and/or contractual fraud or abuse, the City will pursue decertification and debarment. And in addition to any other penalty imposed by law, any person who knowingly obtains, or knowingly assists another in obtaining, a contract with the city by falsely representing that the individual or entity, or the individual or entity assisted, is a minority-owned business or a woman-owned business, is guilty of a misdemeanor, punishable by incarceration in the county jail for a period not to exceed six months or a fine of not less than \$5,000.00 and not more than \$10,000, or both.

Your firm's name will be listed in the City's Directory of Minority and Women-Owned Business Enterprises in the specialty area(s) of:

NAICS Code – 541613 - Marketing consulting services

NAICS Code – 541810 - Advertising agencies

NAICS Code – 541830 - Media buying services

NAICS Code – 541850 - Outdoor display advertising services

NAICS Code – 541910 - Public opinion polling services

Your firm's participation on City contracts will be credited only toward Minority or Woman owned Business Enterprise (MBE/WBE) goals in your area(s) of specialty. While your participation on City contracts is not limited to your specialty, credit toward goals will be given only for work done in the specialty category.

Thank you for your continued interest in the City's Minority and Women-Owned Business Enterprise (MBE/WBE) Program.

Sincerely,



Jamie L. Rhee
Chief Procurement Officer

JLR/vlw

EXHIBIT 4
ONLINE ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT (EDS)

**ONLINE CITY OF CHICAGO ECONOMIC DISCLOSURE
STATEMENT AND AFFIDAVIT (EDS) INSTRUCTIONS**

When submitting your response to this Request for Proposal (RFP) or completing the award of an Agreement with the selected Company for Bicycle Sharing System Advertising, Sponsorship, and Partnership for the City of Chicago for the City of Chicago, **Specification No. 102885**, the Respondent shall a **"Certificate Of Filing"** evidencing completion of your online EDS.

1. ONLINE EDS FILING

1.1. ONLINE EDS FILING REQUIRED PRIOR TO RESPONSE DUE DATE

The Respondent shall complete an online EDS prior to the response due date. A Respondent who does not file an electronic EDS prior to the response due date may be found non-responsive and its response rejected. If you are unable to complete the online EDS and print a Certificate of Filing prior to the response due date, the City will accept a paper EDS provided written justification is provided explaining your good faith efforts to complete it before the response due date and the reasons why it could not be completed.

NOTE: ALWAYS SELECT THE "CONTRACT" (NOT UPDATE) BOX WHEN COMPLETING AN ONLINE EDS TO ENSURE A NEW CONTRACT SPECIFIC ONLINE EDS IS CREATED RELATED TO THE SOLICITATION DOCUMENT. CLICKING THE UPDATE BOX ONLY UPDATES PREVIOUS EDS INFORMATION.

1.2. ONLINE EDS WEB LINK

The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

1.3. ONLINE EDS NUMBER

Upon completion of the online EDS submission process, the Respondent will be provided an EDS number. Respondent should record this number here:

EDS Number: _____

1.4. ONLINE EDS CERTIFICATION OF FILING AND ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT

Upon completion of the online submission process, the Respondent will be able to print a hard copy Certificate of Filing. The Respondent should submit the signed Certificate of Filing and Attachment A, Online EDS Acknowledgement form with its response. Please insert your Certification of Filing and Attachment A, Online EDS Acknowledgement form following the Cover Letter. See Section 5.3, Item 3, Required Contents of Proposal in the RFP. A Respondent who does not include a signed Certificate of Filing and/or Attachment A, Online EDS Acknowledgement form with its response must provide it upon the request of the Chief Procurement Officer.

1.5. PREPARATION CHECKLIST FOR REGISTRATION

To expedite and ease your registration process, we recommend that you collect the following information prior to registering for an Online EDS user account:

	1. Invitation number, if you were provided an invitation number.
	2. EDS document from previous years, if available.
	3. Email address to correspond with the Online EDS system.
	4. Company Information:
	a. Legal Name
	b. FEIN/SSN
	c. City of Chicago Vendor Number, if available.
	d. Address and phone number information that you would like to appear on your EDS documents.
	e. EDS Captain. Check for an EDS Captain in your company - this maybe the person that usually submits EDS for your company, or the first person that registers for your company.

1.6. PREPARATION CHECKLIST FOR EDS SUBMISSION

To expedite and ease your EDS submission, we recommend that you collect the following information prior to updating your EDS information online.

Items #1 through #7 are needed for both EDS information updates and contract related EDS documents:

- _____ 1. Invitation number, if you were provided with an invitation number.
- _____ 2. Site address that is specific to this EDS.
- _____ 3. Contact that is responsible for this EDS.
- _____ 4. EDS document from previous years, if available.
- _____ 5. Ownership structure, and if applicable, owners' company information:
 - _____ a. % of ownership
 - _____ b. Legal Name
 - _____ c. FEIN/SSN
 - _____ d. City of Chicago Vendor Number, if available.
 - _____ e. Address
- _____ 6. List of directors, officers, titleholders, etc. (if applicable).
- _____ 7. For partnerships/LLC/LLP/Joint ventures, etc.:
 - _____ a. List of controlling parties (if applicable).

Items #8 and #9 are needed ONLY for contract related EDS documents:

- _____ 8. Contract related information (if applicable):
 - _____ a. City of Chicago contract package
 - _____ b. Cover page of City of Chicago bid/solicitation package
 - _____ c. If EDS is related to a mod, then cover page of your current contract with the City.
- _____ 9. List of subcontractors and retained parties:
 - _____ a. Name
 - _____ b. Address
 - _____ c. Fees – Estimated or paid

1.7. EDS FREQUENTLY ASKED QUESTIONS

Q: Where do I file?

A: The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

Q: How do I get help?

A: If there is a question mark on a page or next to a field, click on the question mark for help filling out the page or field. You may also consult the User Manual and the Training Videos available on the left menu.

Q: Why do I have to submit an EDS?

A: The Economic Disclosure Statement (EDS) is required of applicants making an application to the City for action requiring City Council, City department or other City agency approval. For example, all bidders seeking a City contract are required to submit an EDS. Through the EDS, applicants make disclosures required by State law and City ordinances and certify compliance with various laws and ordinances. An EDS is also required of certain parties related to the applicant, such as owners and controlling parties.

Q: Who is the Applicant?

A: "Applicant" means any entity or person making an application to the City for action requiring City Council or other City agency approval. The applicant does not include owners and parent companies.

Q: Who is the Disclosing Party?

A: "Disclosing Party" means any entity or person submitting an EDS. This includes owners and parent companies.

Q: What is an entity or legal entity?

A: "Entity" or "Legal Entity" means a legal entity (for example, a corporation, partnership, joint

venture, limited liability company or trust).

Q: What is a person for purposes of the EDS?

A: "Person" means a human being.

Q: Who must submit an EDS?

A. An EDS must be submitted in any of the following three circumstances:

Applicants:	An Applicant must always file this EDS. If the Applicant is a legal entity, state the full name of that legal entity. If the Applicant is a person acting on his/her own behalf, state his/her name.
Entities holding an interest:	Whenever a legal entity has a beneficial interest (E. G. direct or indirect ownership) of more than 7.5% in the Applicant, each such legal entity must file an EDS on its own behalf.
Controlling entities:	Whenever a Disclosing Party is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture that has a general partner, managing member, manager or other entity that can control the day-to-day management of the Disclosing Party, that entity must also file an EDS on its own behalf. Each entity with a beneficial interest of more than 7.5% in the controlling entity must also file an EDS on its own behalf.

Q: What information is needed to submit an EDS?

A: The information contained in the Preparation Checklist for EDS submission.

Q: I don't have a user ID & password. Can I still submit an Online EDS?

A: No. You must register and create a user ID and password before submitting an Online EDS.

Q: What information is needed to request a user ID & password for Online EDS?

A: The information contained in the Preparation Checklist for Registration is needed to request a login for the Online EDS.

Q: I already have a username and password from another City web site (City Web Portal, Department of Construction and Permits, Department of Consumer Services, etc.). Can I log-in the Online EDS with that account?

A: Usually not. The Online EDS uses a user ID and password system that is shared by the Public Vehicle Advertising and Water Payment web sites. You may use a username and password from those sites by answering "Yes" to "Is this an existing City of Chicago user ID?" when registering. Other usernames and passwords will not be automatically recognized. However, you may choose to create an identical username for the Online EDS if it is not already taken.

Q: I don't have an email address. How do I submit an Online EDS?

A: You cannot get an account to submit an online EDS without an email address. If you need an e-mail address, we suggest that you use a free internet email provider such as www.hotmail.com or www.yahoo.com or mail.google.com to open an account. The City does not endorse any particular free internet email provider. Public computers are available at all Chicago Public Library branches.

Q: I forgot my user ID. Can I register again?

A: No. If you are the EDS Captain of your organization, please contact the Department of Procurement Services at 312-744-4900. If you are an EDS team member, contact your EDS Captain, who can look up your user ID.

Q: Who is the EDS Captain?

A: The EDS Captain is a person who performs certain administrative functions for an organization which files an EDS. Each organization registered with the Online EDS has at least one EDS Captain. There may be co-captains, who are all equal. EDS Captains approve new users, change contact information for an organization, and de-active accounts of employees who have left the organization. Please see the User Manual for more information.

Q: Why do we need EDS Captains?

A: The Online EDS is designed to be a self-service web application which allows those doing or seeking to do business with the City to perform as many routine functions as possible without City intervention. Because many organizations have multiple staff filing an EDS, the EDS Captain role allows those organizations to self-manage the contact information and users.

Q: Who is the EDS team?

A: The EDS team for an organization is everyone who is registered to file an EDS on behalf of the organization.

Q: I forgot my password. What should I do?

A: To retrieve a temporary password, click the "Forgot your password?" link on the login page. Enter your user ID that you provided when you registered your account. The system will automatically generate a temporary password and send it to you. When you log-in with your temporary password, you will be asked to create a new password.

Q: How do I complete an Online EDS?

A: Click on "Create New" after logging in. The Online EDS system will walk you through the EDS questions. Please see the User Manual for details.

Q: How do I fill out a Disclosure of Retained Parties?

A: There is no longer a separate Disclosure of Retained Parties filing. After logging in, click on "Create New". Answer (click) "Contract" to "Is this EDS for a contract or an EDS information update?" Click "Fill out EDS", and click on the "Retained Parties" tab. When finished, click on "Ready to Submit."

Q: How do I attach documents?

A: Attachments are discouraged. If at all possible, please provide a concise explanation in the space provided in the online form. Attachments with pages of officers are not acceptable. Names of officers must be typed into the system. If you must provide an attachment for another reason, please send it to your City of Chicago contact (contract administrator or negotiator for procurements) and they will attach it for you. Documents can be sent in PDF (preferred), Word, or paper format.

Q: Who can complete an Economic Disclosure Statement online?

A: Any authorized representative of your business with a user ID and password can complete your EDS online. One person, such as an assistant, can fill in the information and save it, and another person can review and electronically sign the Online EDS.

Q: What are the benefits of filing my Economic Disclosure statement electronically?

A: Filing electronically reduces the chance of filing an incomplete EDS and speeds up the processing of contract awards. A certificate of filing can be printed at the completion of the process and inserted into your bid package. The biggest benefit for those who frequently do business with the City is that after the first EDS, each EDS is much easier to fill out because non-contract specific information is pre-filled from the last submitted EDS.

Q: Will my information be secure?

A: Yes. When making your internet connection to our Web Server, you will connect through a Secure Socket Layer (SSL for short) to the "Online EDS" login page. All information you type will be protected using strong encryption. Within the login page, you will provide us with a user ID, password, and secret question for user authentication. Only you will have knowledge of this unique identification information.

Q: I am filing electronically. How do I sign my EDS?

A: Once you have completed the EDS, you will be prompted to enter your password and answer to your secret question. Together, these will serve as your electronic signature. Although you will also print and physically sign an EDS certification of filing as a notice that your EDS was filed, your EDS is complete as a legal document with only the electronic filing.

Q: My address has changed. How can I update my information?

A: You must be an EDS Captain for your organization to update this. Log-in and click on "Vendor Admin, Site Administration." Select the appropriate site and click edit.

Q: I have more questions. How can I contact the Department of Procurement Services?

A: Please contact the contract administrator or negotiator assigned to your solicitation or contract. You may call DPS at 312-744-4900 between 8:30 AM and 5:00 PM Central Standard Time.

Q: Can I save a partially complete EDS?

A: Yes. Click "Save". To avoid data loss, we recommend you save your work periodically while filling out your EDS.

Q: Do I have to re-type my information each time I submit an EDS?

A: No. The system will remember non-contract specific information from your last submitted

EDS for one year. This information will be filled-in for you in your new EDS. You will have an opportunity to correct it if it has changed since your last filing. When you submit your new EDS, the information is saved and the one-year clock begins running anew.

Q: What are the system requirements to use the Online EDS?

A: The following are minimum requirements to use the Online EDS:

- A PDF viewer such as Adobe Reader is installed and your web browser is configured to display PDFs automatically. You may download and install Adobe Reader free at www.adobe.com/products/reader/
- Your web browser is set to permit running of JavaScript.
- Your web browser allows cookies to be set for this site. Please note that while we use cookies in the Online EDS, we do not use them to track personally identifiable information, so your privacy is maintained.
- Your monitor resolution is set to a minimum of 1024 x 768.
- While not required to submit an EDS, if you wish to view the training videos, you must have Adobe Flash Plugin version 9 or higher, speakers, and sound. Please note that very old computers may not be able to run Adobe Flash and will not be able to play the training videos. In that case, we encourage you to seek help using the Online EDS Manuals. You may download and install Adobe Flash Plugin free at <http://get.adobe.com/flashplayer>

The Online EDS has been tested on Internet Explorer 6.0 and 7.0 and Firefox 2.0 and 3.0 on Windows XP and Mac OS X. Although it should work on other browsers and operating systems, the City of Chicago cannot guarantee compatibility.

**EXHIBIT 5
INSURANCE REQUIREMENTS**

**Chicago Department of Transportation
CDOT Bike Share Sponsorship – Advertising Agreement**

Specification 102885

Consultant must provide and maintain at Consultant's own expense, during the term of the Agreement and time period following expiration if Consultant is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law, covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$500,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work or Services.

Subcontractors performing Services for Consultant must maintain limits of not less than \$1,000,000 with the same terms in this subsection.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with Services to be performed, Consultant must provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

4) Blanket Crime

Consultant must provide Blanket Crime Insurance or equivalent covering all persons handling funds under this Agreement, against loss by dishonesty, robbery, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The policy limit shall be written to cover losses in the amount of the maximum monies and any financial funds collected or received and in the possession of Consultant at any given time.

5) Professional Liability

When any professional consultants including advertising/media professionals and/or any project or program managers performs work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. When policies are renewed or replaced, the policy retroactive date must coincide

with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

Subcontractors performing professional Services for Consultant must maintain limits of not less than \$1,000,000 with the same terms in this subsection.

6) Valuable Papers

When any plans, media, data, files, records, reports or other related documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

7) Property

Consultant is responsible for all loss or damage to personal property (including materials, equipment, tools and supplies) owned, rented or used by Consultant.

B. ADDITIONAL REQUIREMENTS

Consultant must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 403, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Consultant must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached as Exhibit-) or equivalent prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain certificates or other insurance evidence from Consultant is not a waiver by the City of any requirements for the Consultant to obtain and maintain the specified coverages. Consultant must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Consultant of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Consultant.

Consultant hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents or representatives.

The coverages and limits furnished by Consultant in no way limit the Consultant's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by Consultant under this Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Consultant is a joint venture or limited liability company, the insurance policies must name the joint

venture or limited liability company as a named insured.

Consultant must require all Subcontractors to provide the insurance required in this Agreement, or Consultant may provide the coverages for Subcontractors. All Subcontractors are subject to the same insurance requirements of Consultant unless otherwise specified in this Agreement.

If Consultant or Subcontractor desire additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Agreement to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

EXHIBIT 6 ADVERTISING STANDARDS

Advertising Standards

The City of Chicago ("City") recognizes that there are opportunities to realize revenues to be used for the public benefit through the marketing of City Assets, including the display of advertising and/or promotional materials thereon. Pursuant to the authority granted in Section 2- 32-055 of the Chicago Municipal Code, the Chief Financial Officer ("CFO") of the City of Chicago adopts these rules in relation to the display of advertising and/or promotional materials on certain City Assets.

These rules are intended to:

- identify the types of advertising and/or promotional materials that are eligible for display on City Assets to which these rules apply;
- ensure that the rules for accepting advertising and/or promotional materials for display on certain City Assets are consistently enforced;
- maintain and enhance the City's reputation and public image by avoiding advertising and promotional displays on certain City Assets that are offensive or controversial, or are not consistent with the City's image, policies, values, or mission;
- maximize revenue for the City of Chicago.

In making City Assets available for marketing, including the display of advertising and/or promotional materials, the City is acting to generate revenues and not to create a public forum or a limited public forum for dissemination, debate or discussion of public issues. The display of advertising or promotional materials on City Assets pursuant to said marketing efforts does not imply any City endorsement of any product or service advertised, or messages displayed.

DEFINITIONS:

The term "Assets" has the same meaning as in Section 2-32-055 of the Chicago Municipal Code.

The terms "nudity," "sexual conduct," and "sexual excitement" have the same meanings herein as in 720 ILCS 5/11-21(a) (2011) and as such law may be amended, modified or supplemented.

The term "obscene" has the meaning set forth in 720 ILCS 5/11-20(b) (2011) and as such law may be amended, modified or supplemented.

LIMITATIONS UPON ADVERTISEMENTS AND PROMOTIONAL MATERIALS

Advertisements and/or promotional materials displayed on City Assets pursuant to the authority granted by the Section 2-32-055 of the Chicago Municipal Code shall comply with the following rules.

Advertising or promotional materials displayed on City Assets may not contain material or information that:

1. is false, misleading, or deceptive;
2. is libelous or defamatory;

3. promotes unlawful or illegal products, services or activities;
4. infringes on any copyright, trade or service mark, patent, trade secret or other intellectual property right of any person or entity;
5. implies or declares an endorsement by the City of Chicago of any product, service or activity, except upon the written consent of the City of Chicago;
6. is obscene, pornographic, or sexually-explicit material, including, but not limited to, the depiction of nudity, sexual conduct, or sexual excitement;
7. promotes or depicts tobacco or tobacco-products, or their use, or advertises entities whose business is substantially derived from the sale of tobacco or tobacco products;
8. promotes or depicts alcoholic beverages or the use of alcoholic beverages, or advertises entities whose business is substantially derived from the sale of alcoholic beverages;
9. promotes or appears to promote or depict firearms or their use, or advertises entities whose business is substantially derived from the sale of firearms;
10. supports or opposes a political message, or a public issue or cause;
11. advocates imminent lawlessness or violent action, or contains graphic depictions of violence;
12. supports or opposes a religion or religious denomination, creed, tenet or belief, atheism or agnosticism, or that contains a religious message, symbol or endorsement.

The foregoing rules apply to marketing initiatives undertaken pursuant to Section 2-32-055 of the Chicago Municipal Code for the display of advertising or promotional materials on City Assets that are not public forums. Advertisements and/or promotional materials displayed pursuant to a contract or agreement with the City entered into prior to the effective date of Section 2-32-055 of the Chicago Municipal Code are not affected hereby.

Nothing herein limits the City's right to enter into a sponsorship agreement with any person or entity engaged in the business of manufacturing or selling alcoholic beverages, or an agreement for "pouring rights" or for the sale or distribution of alcoholic beverages on City property or at City events.

RESERVATION OF RIGHTS

The City reserves the right, subject to any contractual obligations, to alter these rules, including the right to set additional limitations on advertising and/or promotional materials that may be displayed on City Assets subject to these rules, or to ban the display of advertising and/or promotional materials thereon entirely.

EXHIBIT 7
LIST OF KEY PERSONNEL

Walid Abu-Ghazaleh, Project Manager

Van Wagner

Exhibit 8
Van Wagner's Proposal

Incorporated by Reference

Exhibit 9
Request for Proposal

Incorporated by Reference